FINAL

Rocky Flats Cleanup Agreement

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
and
THE STATE OF COLORADO

IN THE MATTER OF:	)	FEDERAL FACILITY
	)	AGREEMENT AND
	)	CONSENT ORDER
UNITED STATES DEPARTMENT	)	
OF ENERGY	)	
	)	
ROCKY FLATS ENVIRONMENTAL	)	
TECHNOLOGY SITE	)	CERCLA VIII-96-21
	)	RCRA(3008(h)) VIII-96-01
	)	
	)	STATE OF COLORADO
	)	DOCKET # 96-07-19-01

PREAMBLE TO THE
ROCKY FLATS CLEANUP AGREEMENT

A. INTRODUCTION

Activities at Rocky Flats will be guided generally by the Rocky Flats Vision (See Appendix 9). The Rocky Flats Cleanup Agreement is the legally binding agreement between the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the Colorado Department of Public Health and Environment (CDPHE) to accomplish the required cleanup of radioactive and other hazardous substances contamination at and from the Rocky Flats Environmental Technology Site (RFETS). The U.S. Government owns RFETS and DOE is the Party required by law to perform the cleanup work. DOE's activities in this regard are subject to the EPA's and CDPHE's statutory authorities to approve and monitor both the conduct and the completion of the cleanup.

The following objectives will help to guide implementation of the Rocky Flats Cleanup Agreement (RFCA) in order to achieve the goals expressed in the Vision. The provisions of the RFCA, which follow, comprise the legal document that describes the relationship between the Agencies during cleanup. The RFCA will also ensure the effective and efficient cleanup of the Site. The following objectives, while not legally binding commitments unless also included within the body of RFCA (or other binding documents, orders or regulatory requirements), define how DOE and the regulators will oversee specific activities at the Site, and

will guide implementation of RFCA to be consistent with, and to help achieve the goals of the Rocky Flats Vision.

B. OBJECTIVES

Each objective includes a broad Summary, followed by more specific statements for each topic in the Near-Term and Intermediate Site Conditions.

1. Disposition of Weapons Useable Fissile Materials and Transuranic Wastes

Summary: DOE will stabilize, consolidate, and temporarily store weapons useable fissile materials and transuranic wastes on-site for removal; ultimate removal of weapons useable fissile material is targeted for no later than 2015.

a. Near-Term Site Condition. DOE will stabilize, consolidate, and store weapons useable fissile materials and transuranic wastes on-site in a safe and cost- effective manner. Weapons useable fissile material is targeted for removal from RFETS as soon as possible, beginning no later than 2010 and to be completed by 2015. No additional weapons useable fissile material will be transferred onto RFETS.

Other special nuclear material that is not weapons useable fissile materials or transuranic waste will be shipped off-site as soon as possible.

Transuranic waste will be shipped to the Waste Isolation Pilot Plant (WIPP) as soon as this facility is available to accept waste from RFETS. DOE, EPA and the State of Colorado are committed to aggressively pursuing the early opening of WIPP and making it available to accept wastes from RFETS as soon as possible. If WIPP is not opened, does not have sufficient capacity to accept all of RFETS's transuranic waste, or is otherwise not available, another off-site facility will be identified, and TRU waste will be shipped to the alternate facility as soon as possible.

b. Intermediate Site Condition. Weapons useable fissile materials are targeted for removal from RFETS by 2015. By the end of the Intermediate Site Condition, all transuranic waste will have been removed from RFETS.

2. On-Site and Off-Site Waste Management

There are substantial risks and costs in removing wastes now stored on-site and those wastes that will be generated during plutonium stabilization, cleanup and building decommissioning. DOE, together with the regulators and with appropriate public participation, will determine which wastes are stored or disposed on-site or removed through an ongoing process consistent with this Objective.

Summary: Waste management activities for low-level, low-level mixed, hazardous, and solid wastes will include a combination of on-site treatment, storage in a retrievable and monitored manner, disposal, and off-site removal. Low-level and low-level mixed wastes generated during cleanup will be stored

in a safe, monitored and retrievable manner for near-term shipment off-site, long-term storage with subsequent shipment off-site and/or long-term storage with subsequent disposal on-site of the remaining wastes.

a. Near-Term Site Condition. Initially, controlling the sources of contamination will take priority over off-site waste shipments to maximize risk reduction. Off-site shipments of waste will occur based on consideration of relevant factors, including risk, technology, facility availability, and cost. DOE, EPA and CDPHE will actively seek off-site facilities to accept RFETS's waste.

During this period, most active environmental cleanup will be completed. Cleanup will include the treatment, consolidation, and management of contaminated soil, water and material. Low-level and low-level mixed wastes generated during cleanup will be stored in a safe, monitored and retrievable manner for near-term shipment off-site, long-term storage with subsequent shipment off-site, and/or long-term storage with subsequent disposal on-site of the remaining wastes. For both storage options, the wastes will be stored in a manner that is environmentally safe, and in compliance with legal requirements. Decisions about the manner of providing retrievability and monitorability will be based on the following factors: risk, legal requirements, waste type, technology, cost effectiveness, and community concerns. For any stored waste that remains on-site (other than those stored temporarily awaiting shipment off-site), storage facilities will be designed to provide safe storage with an option to convert to disposal at some time in the future. Decisions about whether to utilize treatment, storage or disposal options, or to convert from storage to disposal, will be made during this period, always with an opportunity for public input.

Existing and any future on-site landfills will be closed in compliance with legal requirements. The landfills will be capped using a low-profile contour, designed to blend in with the natural topography of the Site.

b. Intermediate Site Condition. Waste materials that are to be removed will have been shipped off-site. Any necessary follow-up cleanup related to the former storage sites will have been completed. By the end of this period, decisions will have been made regarding stored material for its continued storage, treatment or disposal.

3. Water Quality

Summary: At the completion of cleanup activities, all surface water on-site and all surface and groundwater leaving RFETS will be of acceptable quality for all uses.

a. Near-Term Site Condition. The Agencies are committed to reliable controls and monitoring to protect water quality during cleanup activities, storage of special nuclear material and wastes, and storm events. Contaminants and contamination sources that pose an unacceptable risk will be removed, controlled, or stabilized. Protection of all surface water uses will be a basis for making interim soil and groundwater cleanup and management decisions. Actions will be designed to prevent adverse impacts to ecological resources and groundwater consistent with the Action Levels and Standards Framework Attachment to the RFCA.

Surface water leaving RFETS will continue to be diverted around Standley Lake and the Great Western Reservoir. The quality of surface water leaving RFETS during cleanup activities will meet standards for aquatic life, recreation, and agricultural classifications, but not for domestic (drinking water) use. On-site groundwater will not be used for any purpose unrelated to RFETS cleanup activities. Surface water standards for plutonium and americium during cleanup activities will be based on a conservative risk-based approach. Proposed changes to state water quality standards will be presented to the Colorado Water Quality Control Commission for approval.

Water quality management plans will be developed with the participation and involvement of municipalities and counties whose water supplies are potentially affected by RFETS.

b. Intermediate Site Condition. By the time cleanup activities are completed, all on-site surface water and all surface water and groundwater leaving RFETS will be of acceptable quality for all uses including domestic water supply. Groundwater quality in the Outer Buffer Zone and off-site will support all uses. On-site groundwater will not be used for any purpose unrelated to RFETS cleanup activities. Reliable monitoring and controls to protect water quality during storage of plutonium and other special nuclear material and wastes, and during storm events, will continue. To assure the above described water quality, long-term operation and maintenance of waste management and cleanup facilities will continue.

4. Cleanup Guidelines

Summary: Cleanup activities will be conducted in a manner that will:

- **** reduce risk;**
- **** be cost-effective;**
- **** protect public health;**
- **** protect reasonably foreseeable land and water uses;**
- **** prevent adverse impacts to ecological resources, surface water and groundwater; and**
- **** be consistent with a streamlined regulatory approach.**

a. Near-Term Site Condition. Cleanup will include treatment, consolidation, and management of contaminated soil, water and materials in a manner that protects public health, reduces the impact to the natural environment, and minimizes the generation of new wastes. Environmental cleanup will be accomplished to protect and support open space uses in the Inner and Outer Buffer Zones and limited industrial uses as noted in the Future Site Use Working Group (FSUWG) report [1]. In the vicinity of buildings converted to non-DOE use, cleanup will be to industrial use levels in the Industrial Area. See also the discussion in the Land Use section below.

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1 The FSUWG's June 1995 Report, "Future Site Use Recommendations," is available in the repositories listed in Attachment 7.

b. Intermediate Site Condition. After off-site disposition of plutonium, other special nuclear material and transuranic wastes, the cleanup of the buildings that contained these materials, and of any residual waste from their shipment or storage, will be completed. Appropriate monitoring, operation and maintenance of any remaining treatment, storage, or disposal facilities will continue.

5. Land Use

Summary: Cleanup decisions and activities are based on open space and limited industrial uses; the particular land use recommendations of the Future Site Use Working Group (FSUWG) are not precluded; specific future land uses and post-cleanup designations will be developed in consultation with local elected officials, local government managers, RFLII, CAB, other groups and citizens. The Parties recognize the legal authority of local government to regulate future land use at and near RFETS.

a. Near-Term Site Condition. The Buffer Zone will be managed, and cleaned as necessary, to accommodate open space uses in the Buffer Zone and open space or industrial uses in the existing Industrial Area. During this period, access to the Buffer Zone will remain controlled consistent with cleanup efforts and the need for a safety and security zone around weapons useable fissile material on-site. A part of the Industrial Area will be reserved for waste treatment, storage, or disposal facilities.

During cleanup, non-DOE activities may take place in areas other than the Buffer Zone, provided they do not adversely impact cleanup and closure work. Particular open space and industrial uses as recommended by the FSUWG are not precluded. These uses will be developed in consultation with local elected officials, local government managers, RFLII, CAB, other groups and citizens. See the FSUWG Report for additional detail regarding recommended land uses during and after cleanup.

b. Intermediate Site Condition. At the beginning of this period, access to the Buffer Zone will continue to be controlled consistent with the safety and security needs of plutonium, other special nuclear material and transuranic wastes. After weapons useable fissile material and transuranic wastes are removed, DOE will work with local elected officials, local government managers, RFLII, CAB, other groups and citizens to determine the optimal use of the Buffer Zone. Any access controls and/or institutional controls that are necessary or appropriate for public health, environmental protection, ongoing monitoring and operation and maintenance activities, will continue.

6. Environmental Monitoring

Summary: Environmental monitoring will be maintained for as long as necessary.

a. Near-Term Site Condition. A robust environmental monitoring system will be maintained to provide information for cleaning up the Site, to assure public safety, and to keep the public informed. The system will maximize the available resources of the Agencies and

municipalities and will minimize duplicative efforts. The system will include both routine (baseline and regular) and non-routine (to respond to events or worst case) monitoring.

b. Intermediate Site Condition. After plutonium, other special nuclear material and transuranic wastes are gone, the monitoring system will continue to address remaining waste management facilities and water quality needs. This monitoring system will remain in place for as long as necessary for the protection of public health, environment, and safety.

7. Building Disposition

Summary: All contaminated buildings will be decontaminated as required for future use or demolition; unneeded buildings will be demolished.

a. Near-Term Site Condition. All contaminated buildings will be decontaminated as required for future use or demolition. Building demolition or reuse will take place after plutonium, other special nuclear material, transuranic waste, and radioactive hot-spots have been removed. In most cases, contaminated systems (such as gloveboxes, duct-work and piping) will be decontaminated and removed prior to demolition. In a few instances, contaminated systems will be decontaminated and demolished along with the building.

Radioactive material removed from buildings will be either processed and added to RFETS's plutonium inventory, packaged as transuranic waste for eventual removal, or handled as low-level or low-level mixed waste and stored in a retrievable and monitored manner. Uncontaminated or decontaminated buildings will be demolished or made available to the private sector for other economic uses in consultation with local officials, the Community Reuse Organization, and interested members of the public, provided that these uses do not adversely impact cleanup and closure activities. Building debris will be disposed of as follows: clean rubble will be recycled, stored or removed, or disposed on-site; contaminated rubble will be stored on-site in a retrievable and monitored manner or disposed.

b. Intermediate Site Condition. By the end of this period, the remaining buildings that were used for plutonium, other special nuclear material, and transuranic waste storage will have been demolished. Also by the end of this period, decisions will have been made regarding material that has been stored in a retrievable and monitored manner for its continued treatment, storage or disposal.

8. Mortgage Reduction

Summary: Weapons useable fissile material and transuranic wastes will be safely consolidated into the smallest number of buildings to reduce operating costs and shrink the security perimeter; contaminated and non-contaminated buildings will be decommissioned and either demolished or turned over for other non-DOE uses.

a. Near-Term Site Condition. DOE will stabilize and consolidate weapons useable fissile material and transuranic wastes to achieve safer and less expensive storage while awaiting

removal of these materials. The contaminated buildings from which these materials were removed will be decontaminated and closed. RFETS will also close or convert to non-DOE uses non-contaminated buildings as expeditiously as possible. In consultation with local officials, the Community Reuse Organization, and interested members of the public, utilities and other infrastructure will be substantially reduced during this period. As operating costs are reduced through building shut-downs, every effort will be made to return the cost savings to RFETS to fund cleanup and closure activities.

b. Intermediate Site Condition. During this period, the secured area will be further reduced and eventually removed. Operating costs will be minimized. By the end of this period, weapons useable fissile material and transuranic wastes will have been removed from RFETS and the related buildings will have been decontaminated and either demolished or converted to non-DOE uses. Closure or conversion to non-DOE use of non-contaminated buildings will be completed by the end of this period. Also by the end of this period, in consultation with local officials, the Community Reuse Organization, and interested members of the public, existing RFETS infrastructure will be essentially eliminated, except for monitoring, and operation and maintenance of any remaining waste storage or disposal facilities, or to support RFETS reuse activities, to the extent that it is paid for by the users.

9. Definitions of terms used in this Preamble

The following description of terms used in this Preamble is provided for information. These are not scientific definitions. They apply only to these terms as used in this Preamble.

a. Plutonium

Plutonium is found in the form of metals, oxides, solutions and residues. These materials are currently in storage or will be recovered in the future.

b. Special Nuclear Material

Special nuclear material is plutonium, plutonium-uranium combinations, and enriched uranium. All of RFETS's estimated 14.2 tons of plutonium is included within the broad definition of special nuclear material. Although special nuclear material and plutonium largely overlap, the terms are listed separately throughout the Preamble to address all forms of special nuclear material and to specifically identify the objectives for plutonium.

c. Transuranic Waste

Transuranic waste is a radioactive waste contaminated with elements heavier than uranium (such as plutonium and americium) in concentrations above 100 nanocuries per gram. Transuranic waste is both process waste from past production activities as well as waste generated from building decontamination. Typical transuranic waste at RFETS is similar to low-level waste but with generally higher levels of radioactivity. For the purposes of this Preamble, transuranic waste includes transuranic-mixed waste, which is transuranic waste that contains hazardous waste.

d. Low-Level Waste

Low-level waste is a radioactive waste that is not high-level waste, spent nuclear fuel, by-product material, or transuranic waste (although it may contain small amounts of transuranic elements). At RFETS, it exists in many forms such as rags, paper, plastic, glassware, filters, soils and some building rubble.

e. Low-Level Mixed Waste

Low-level mixed waste is low-level waste that contains hazardous waste.

f. Near-Term Site Condition

The Near-Term Site Condition is the time period during which the following activities will be completed: consolidation, stabilization and safe storage of plutonium, other special nuclear material and transuranic wastes; storage in a retrievable and monitored manner, disposal, and some removal of low-level, low-level mixed and other wastes; and nearly all cleanup activities. It is the intent of the Agencies to accelerate RFETS's activities to substantially achieve and complete risk reduction and cleanup during this period of time. Completion of activities in this period is anticipated to take about 8 to 15 years.

g. Intermediate Site Condition

The Intermediate Site Condition is the period of time during which all weapons useable fissile material, and transuranic wastes will be removed from RFETS. By the end of this period, none of these materials, nor the buildings that contained them, will remain. Also by the end of this period, all low-level, low-level mixed, hazardous, and solid wastes will have been shipped off-site, disposed, or stored in a retrievable and monitored manner to protect public health and the environment. Any remaining cleanup will be completed. Activities occurring in this period are anticipated to be completed about 12 to 20-25 years from now.

h. Weapons Useable Fissile Materials

Weapons useable fissile materials are materials that are not transuranic or low-level radioactive or mixed wastes and that contain any isotopes of Pu (except materials containing only Pu-238) and highly enriched uranium that contains at least 20 percent uranium-235.

i. Long-Term Site Condition

The Long-Term Site Condition follows the Intermediate Site Condition and continues through the indefinite future. Additional cleanup and removal activities may be conducted in this time period as funding, technology and political opportunities allow. While recognizing that some members of the public prefer cleanup to background levels, the Agencies are unable to commit to this goal. The Agencies will continue to explore new technologies to make further cleanup possible. The Parties will avoid taking actions that would, as a practical matter, preclude further cleanup in the long-term future. Activities beyond the Intermediate Site Condition are unknown, and perhaps unknowable, and are therefore not described.

ROCKY FLATS CLEANUP AGREEMENT

Based on the information available to the Parties on the effective date of this FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (the Rocky Flats Cleanup Agreement ("RFCA" or "this Agreement")) and without trial or adjudication of any issues of fact or law, the Parties have exercised good faith and due diligence in establishing both the substantive and procedural requirements of this Agreement. The Parties believe, at the time this Agreement is executed, that the requirements of this Agreement are achievable. Therefore, the Parties agree as follows:

PART 1 JURISDICTION

1. The United States Environmental Protection Agency, Region VIII (EPA), enters this Agreement pursuant to sections 104, 106(a) and 120(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9604, 9606(a), and 9620(e), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA); sections 6001, 3008(h), and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616 and the Federal Facility Compliance Act of 1992, Pub. L. No. 102-386 (hereinafter jointly referred to as RCRA); and Executive Orders 12088 and 12580.

2. The Colorado Department of Public Health and Environment (CDPHE) enters into this Agreement pursuant to sections 104(d), 120(f), 121, and 310 of CERCLA, 42 U.S.C. § 9604(d), 9620, and 9810; section 3006 of RCRA, 42 U.S.C. § 6926; the Colorado Hazardous Waste Act ("CHWA"), section 25-15-301(1) C.R.S. Pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on November 2, 1984, the Administrator of EPA authorized CDPHE to administer and enforce the State hazardous waste program in lieu of the federal program. CDPHE was authorized to regulate radioactive mixed waste on November 7, 1986, and was further authorized to administer and enforce certain portions of the HSWA amendments on July 14, 1989. CDPHE is the State agency designated by the CHWA, section 25-15-301(1) C.R.S. (1989), to implement and enforce the provisions of RCRA and CHWA. Requirements of this Agreement that relate to RCRA and CHWA are a Compliance Order on Consent issued by CDPHE pursuant to section 25-15-308(2), C.R.S. CDPHE also enters into this Agreement pursuant to the Colorado Air Pollution Prevention and Control Act, section 25-7-101, C.R.S., and, if delegation of the federal Clean Water Act program for the Rocky Flats Environmental Technology Site is received, the Colorado Water Quality Control Act, section 25-8-101, C.R.S.

3. The United States Department of Energy (DOE) enters into this Agreement pursuant to section 120(e) of CERCLA, 42 U.S.C. § 9620 (e); §§ 6001, 3008(h), and 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6961, 6921(h), 6928(u) and (v); section 118 of the Clean Air Act, 42 U.S.C. § 7418; Executive Orders 12088 and 12580; and the Atomic Energy Act of 1954, as amended (AEA), 42 U.S.C. § 2011 et seq.

4. The Parties agree that they are bound by this Agreement and that the requirements of this Agreement may be enforced against DOE pursuant to Parts 16 (Enforceability), 17 (Stipulated Penalties), and 18 (Reservation of Rights) of this Agreement or as otherwise provided by law. DOE

consents to and will not contest EPA or State jurisdiction for the purposes of executing and enforcing this Agreement or its requirements.

5. The activities undertaken pursuant to this Agreement are regulated under CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (NCP), RCRA and CHWA and their implementing regulations, and other applicable State environmental law, and shall be implemented in accordance with all applicable statutes, regulations, and Executive Orders. If any new or amended statute or regulation pertinent to this Agreement becomes effective subsequent to the date of execution of this Agreement, any modifications to this Agreement made necessary by such changes in the law shall be incorporated by modification into this Agreement, and other modifications related to such changes in the law shall be subject to further negotiations. The Parties shall conduct an annual review of all applicable new and revised statutes and regulations and written policy and guidance to determine if an amendment pursuant to Part 19 (Amendment of Agreement) is necessary. Any reference in this Agreement to a statute shall include that statute's implementing regulations.

6. The 1991 Federal Facility Agreement and Consent Order, CERCLA VIII-91-03, RCRA (3008(h)) VIII-91-07 and State of Colorado Docket number 91-01-22-01, shall terminate and be replaced with this Agreement by consensus of the Parties, on the effective date of this Agreement as established pursuant to Part 33 (Effective Date) of the Agreement.

PART 2 PARTIES AND ROLE OF DOE CONTRACTORS

7. The Parties to this Agreement are EPA, CDPHE, and DOE.

8. The Parties acknowledge the guidance contained in the United States Office of Management and Budget Policy Letter 92-1 dated September 30, 1992, "Inherently Governmental Functions," as that guidance pertains to avoiding potential conflicts of interest by federal contractors. Accordingly, DOE will exercise independent judgment with respect to policy decisions associated with meeting the requirements of this Agreement. DOE shall be responsible for satisfying the requirements of this Agreement regardless of whether DOE carries out the requirements through its own employees, agents, and support contractors, or through its RFETS integrating management contractor. Upon the request of EPA and/or CDPHE, DOE shall provide the identity and work scope of employees, agents, and support contractors used in carrying out the requirements of this Agreement. Further, upon request of EPA and/or CDPHE, DOE shall provide the identity and work scope of its integrating management contractor and any first or second tier subcontractor used in carrying out the requirements of this Agreement.

PART 3 STATEMENT OF PURPOSE

9. The purpose of this Agreement is to establish the regulatory framework for achieving the ultimate cleanup of the Site. To further this purpose, the Parties have developed a set of general parameters to guide individual cleanup decisions, without predetermining those decisions. These parameters include assumptions regarding reasonably foreseeable future land and water uses, strategic approaches to cleanup, approaches to setting cleanup standards, options for interim storage and expectations for removal of plutonium, fate of existing buildings, and waste disposal. The parameters are contained in the Preamble to this Agreement as well as a broadly stated Rocky Flats Vision ("Vision"). Though the Preamble is not "enforceable" per se, the Parties intend that decisions made under this Agreement shall consider and reflect the objectives contained in the Vision and the Preamble.

10. In addition to the objectives expressed in the Preamble, the specific purposes of this Agreement are to:

a. Ensure that the Parties work together in a cooperative spirit that facilitates the cost effective and timely cleanup of the Site; that promotes an orderly, effective investigation and cleanup of contamination at the Site; and that avoids litigation between the Parties.

b. Ensure that the environmental impacts associated with activities at the Site will continue to be investigated and that appropriate response action is taken and completed as necessary to protect the public health, welfare, and environment.

c. Provide an opportunity for review of response actions by the appropriate federal and State Natural Resources Trustees to minimize or eliminate potential injury to natural resources.

d. Establish a procedural framework and schedule for developing, implementing, and monitoring appropriate response actions at the Site and to ensure that such actions are conducted in accordance with CERCLA, RCRA, CHWA, and other applicable State and Federal environmental laws. In evaluating proposed activities, the Parties shall consider any relevant written guidance or policy.

e. Reduce risks to RFETS workers, the public, and the environment through the cleanup process, in accordance with applicable standards and regulatory requirements.

f. Seek ways to accelerate cleanup actions and eliminate unnecessary tasks and reviews, by requiring that the Parties to the Agreement work together, within each Party's statutory role, while fully involving other stakeholders as required by law and good practice.

g. Provide the flexibility to modify the work scope and schedules, recognizing that priorities of specific tasks and schedules may change as the cleanup progresses due to emerging information on Site conditions, risk priorities, and available resources.

h. Provide for appropriate regulation or oversight of activities in contaminated buildings consistent with the following principles:

(1) a single set of protocols or a single process;
(2) where possible, a single regulator for regulation or oversight;
(3) timely reviews;
(4) a bias for action; and
(5) appropriate accountability of all Parties.

i. Ensure early and meaningful public involvement, including local elected officials, local government managers, RFLII, CAB, other groups and citizens in the implementation of this Agreement, in the development and review of strategic plans, and in the initiation, development and selection of remedial actions to be undertaken at the Site, including timely review of applicable data, reports, and action plans developed for the Site.

j. Establish non-enforceable target dates regarding the removal of weapons-useable fissile material from RFETS. The Parties will review these targets in the year 2000, modify them as necessary or appropriate, and establish them as enforceable commitments from that date forward. The enforceable commitments may carry financial incentives/disincentives, and will be framed to operate within the regulatory framework existing at the time of adoption (2000). The non-enforceable target dates below are established at this time for inclusion in this Agreement:

(1) DOE will begin to remove weapons-useable fissile material from RFETS as soon as possible, but no later than 2010.
(2) DOE will complete the removal of weapons-useable fissile material from RFETS by 2015.

k. Conduct the remediation of contamination at the Site in a manner that is consistent with the Vision and the Preamble.

l. Substantially reduce the costs of cleanup activities at the Site through improved project management, greater involvement of regulators in DOE's planning and budgeting processes, increased reliance on accelerated actions, improved oversight of cleanup, greater use of consultative approaches, elimination of unnecessary procedures, and streamlining of other procedures.

m. Establish one set of consistent requirements for the performance of a RCRA Facility Investigation/Remedial Investigation (RFI/RI) for OUs at the Site as appropriate to determine the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, contaminants, hazardous waste or constituents at the Site; and to establish one set of consistent requirements for the performance of a Corrective Measures Study/Feasibility Study (CMS/FS) for OUs at the Site, as appropriate, to identify, evaluate, and select alternatives for the appropriate remedial/corrective action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, contaminants, hazardous waste or constituents at the Site in accordance with CERCLA, RCRA, CHWA, and other applicable State environmental law.

n. Describe the roles and responsibilities of the Parties.

o. Coordinate all of DOE's cleanup obligations under CERCLA, RCRA, and CHWA in a single agreement to streamline compliance with these three statutes.

p. Establish a process for identifying the applicable or relevant and appropriate legal requirements for response action(s) regulated under CERCLA.

q. Provide for continued operation and maintenance of the selected remedial/corrective action(s) as appropriate.

r. Establish a procedural framework and schedule such that the remedial investigation and response actions selected and implemented by the Parties are sufficient to meet the criteria and procedures for the Site's timely removal and delisting from the NPL.

PART 4 STATUTORY COMPLIANCE/RCRA-CERCLA COORDINATION

11. The Parties intend to use this Agreement to coordinate DOE's CERCLA response obligations, CHWA closure obligations for hazardous waste management units identified in this Agreement, and CHWA and RCRA corrective action obligations. Therefore, the Parties intend that compliance with the requirements of this Agreement will be deemed to achieve compliance with:

a. CERCLA, 42 U.S.C. § 9601 et seq., and specifically that the cleanup at the Site will satisfy all applicable or relevant and appropriate federal and State laws and regulations, to the extent required by section 121 of CERCLA, 42 U.S.C. § 9621;

b. the corrective action requirements of sections 3004(u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities;

c. the corrective action requirements of CHWA, including 6 CCR 1007-3 sections 264.101 and 265.5; and

d. the closure requirements of CHWA for those hazardous waste management units identified in Attachment 3.

12. The Parties also intend to coordinate the remedial activities that are regulated under this Agreement with requirements of the Federal Facility Compliance Act to develop a plan or agreement for treatment of mixed waste generated by actions required under this Agreement. This coordination will occur as follows:

a. For mixed wastes generated under this Agreement that will not be treated by the mixed waste treatment capacity developed to treat non-remedial wastes in accordance with the then applicable Site Treatment Plan and Order enforced by CDPHE, the state portion of the relevant decision document shall constitute the order required under 42 U.S.C. § 6939c(b)(5).

b. For mixed wastes generated under this Agreement that will be treated by the mixed waste treatment capacity developed to treat non-remedial wastes in accordance with the then applicable Site Treatment Plan and Order enforced by CDPHE, compliance with 42 U.S.C. § 6939c(b)(5) shall be regulated under the then applicable Site Treatment Plan and Order enforced by CDPHE, and shall not be enforced under this Agreement.

13. The Parties recognize that:

a. DOE is obligated to comply with applicable requirements of RCRA, CHWA, CERCLA, and State environmental law for all remedial activities under this Agreement;

b. the coordination of these statutory requirements under this Agreement in no way diminishes DOE's obligations;

c. the inclusion of these statutory requirements in a single document serves to facilitate DOE's efficient compliance with these statutory requirements; and

d. the Agreement is a single document that has dual purposes of serving as both a CERCLA § 120 Interagency Agreement and a CHWA corrective action order; the requirements of both are enforceable by the Parties.

14. The Parties intend that any final response action selected, implemented, and completed under this Agreement shall be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further action outside the scope of this Agreement to protect human health or the environment for those same releases. While the Parties intend to minimize any residual injury to natural resources, completion of work pursuant to this Agreement does not bar a claim by the State for natural resource damages.

15. DOE is subject to a CHWA permit that contains provisions governing corrective action for releases of hazardous wastes or constituents at the Site. These corrective action provisions were drawn from the Statement of Work element of the 1991 Interagency Agreement . The Parties recognize the continuing need to ensure consistency between the corrective action requirements of the permit and the requirements of this Agreement, and agree to take such actions as are necessary to accomplish this goal. Therefore, the Parties agree that when this Agreement becomes effective, CDPHE shall issue a permit modification to remove the "Statement of Work" references from Part 15 of the CHWA permit and the Attachments section of the CHWA Permit, and to incorporate the following language as the corrective action requirement of the CHWA permit:

> There have been releases of hazardous wastes and constituents from solid waste management units into the environment at Rocky Flats. Accelerated corrective and remedial actions to address these releases are being regulated by the Department [CDPHE] and EPA under the Rocky Flats Cleanup Agreement, Compliance Order on Consent No. 96-XX-XX-01 ("RFCA"). Following implementation of these accelerated corrective and remedial actions, the Department [CDPHE] will be making a final corrective action decision for each OU. The final corrective action decisions will be incorporated as modifications to this permit. If the RFCA

is terminated before all corrective action has been taken, this permit shall be modified to incorporate requirements of the RFCA that are requirements of CHWA.

16. The Parties recognize that under section 121(e)(1) of CERCLA, portions of the response actions required by this Agreement and conducted entirely on the Site are exempted from the procedural requirement to obtain federal, state, or local permits, when such response action is selected and carried out in compliance with section 121 of CERCLA. It is the understanding of the Parties that the statutory language is intended to avoid delay of on-Site response actions, due to procedural requirements of the permit process. The Parties agree that the following activities are being approved, at least in part, pursuant to CERCLA authorities:

a. removal or remedial actions in the Buffer Zone (except as provided below with respect to a retrievable, monitored storage or disposal facility);
b. decommissioning activities;
c. activities required under any concurrence CAD/ROD; and
d. remedial actions in the Industrial Area for hazardous substances that are not also hazardous wastes or hazardous constituents (e.g., radionuclides that are not mixed wastes and PCBs).

Therefore, no permits are required for the activities described in (a)-(d) above. Subject to paragraph 98, DOE agrees to seek and implement any federal, state or local permits, including RCRA or CHWA permits, for operations or processes required to implement activities regulated under this Agreement, other than those listed in (a)-(d) above. Notwithstanding subparagraph (a) above, an action to construct and operate a retrievable, monitored storage or disposal facility as described in paragraph 80 in the Buffer Zone will be submitted for review and approval pursuant to State authorities under this Agreement, and such action must obtain all applicable permits as provided in this Agreement. Notwithstanding subparagraph (c) above, this Agreement does not constitute an admission by any Party as to whether permits would be required if EPA and CDPHE do not issue concurrence CAD/RODs. In such a case, the provisions of Parts 15 (Dispute Resolution) and 18 (Reservation of Rights) may be applied.

17. When DOE proposes a response action regulated under CERCLA that, in the absence of CERCLA section 121(e)(1) and the NCP, would require a federal or State permit, DOE shall include in the submittal:

a. Identification of each permit which would otherwise be required.

b. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit.

c. Explanation of how the response action proposed will meet the standards, requirements, criteria, or limitations identified in subparagraph 17b immediately above.

18. Upon the request of DOE, EPA and CDPHE will provide their positions with respect to paragraphs 17b and 17c above in a timely manner.

19. This Part is not intended to relieve DOE from any applicable requirements for the shipment or movement of hazardous waste or hazardous substances off the RFETS. DOE shall obtain all permits and comply with applicable federal, State, or local laws for such shipments. DOE shall submit timely applications and requests for such permits and approvals. Disposal of hazardous substances off-site shall comply with DOE's Policy on Off-Site Transportation, Storage, and Disposal of Nonradioactive Hazardous Waste, dated June 24, 1986, and the EPA Off-Site Response Action Policy, dated May 6, 1985, 50 Fed. Reg. 45933 (November 5, 1985), as amended by EPA's November 13, 1987, "Revised Procedures for Planning and Implementing Off-Site Response Actions" and as subsequently amended.

20. DOE shall notify CDPHE and EPA in writing of any permits RFETS is required to obtain for off-site activities related to this Agreement as soon as it becomes aware of the requirement. Upon request, DOE shall provide CDPHE and EPA with copies of all such permit applications and other documents related to the permit process.

21. If a permit necessary for implementation of activities related to this Agreement is not issued or is issued or renewed in a manner that is materially inconsistent with the requirements of this Agreement, DOE shall notify CDPHE and EPA of its intention to modify the baseline and/or propose changes to regulatory milestones to comply with the permit (or lack thereof). DOE shall notify EPA and CDPHE in writing of its intention to propose changes within 10 business days of receipt by DOE of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within 30 days from the date it submits its notice of intention to propose changes, DOE shall submit to CDPHE and EPA its proposed changes with an explanation of its reasons in support thereof.

22. CDPHE and EPA shall review any of DOE's proposed changes to regulatory milestones submitted pursuant to the preceding paragraph. If DOE submits proposed changes to regulatory milestones prior to a final determination of any appeal taken on a permit needed to implement this Agreement, CDPHE and EPA may elect to delay review of the proposed changes until after such final determination is entered. If CDPHE and EPA elect to delay review, DOE shall continue implementation of this Agreement as provided in the following paragraph. If EPA and CDPHE fail to agree to a proposed change to any regulatory milestones within 30 days of such proposal, DOE may invoke the Dispute Resolution procedures of Subpart 15E or 15B, as appropriate.

23. During any appeal of any permit required to implement this Agreement or during review of any of DOE's proposed changes to regulatory milestones as provided in the preceding paragraph, DOE shall continue to implement those portions of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

24. Some of the activities regulated under this Agreement may also be subject to the oversight of the Defense Nuclear Facility Safety Board (DNFSB). To ensure coordination of the DNFSB's oversight role with the regulation of such activities under this Agreement, the Parties and the DNFSB have entered into a Memorandum of Understanding, a copy of which is found in Appendix 1.

PART 5 DEFINITIONS

25. If there is an inconsistency between CERCLA, RCRA, and CHWA with respect to the following definitions, the Agreement's definition controls. If there is no definition in this Agreement, but there is an inconsistency between the statutory definitions for CERCLA, RCRA, and CHWA, including their related regulatory definitions, the definitions in CERCLA and the NCP shall control. The following definitions are used for the purposes of this Agreement:

a. Accelerated Actions means those expedited response actions approved as a Proposed Action Memorandum, Interim Measure/Interim Remedial Action, or RSOP.

b. Additional work means work that is both (1) required by EPA and/or CDPHE after milestone setting for the current fiscal year, and (2) is not already included in the baseline.

c. Administrative Record shall refer to the compilation of documents which establishes the basis of all removal and remedial action decisions for each OU at the Site, as required by section 113(k)(1) of CERCLA.

d. Rocky Flats Cleanup Agreement, "this Agreement" or RFCA means the body of this Agreement (pages 1-85) and all Attachments, Amendments, approved documents, other approvals by the LRA or both EPA and CDPHE, as appropriate, final written resolution of any dispute, and amendments to this document, but does not include Appendices. All requirements in such Attachments, Amendments, approved documents, LRA approvals, work description documents, and amendments shall be incorporated into this Agreement. Approved documents, other approvals, and final resolutions of dispute shall not be physically attached to this document. Appendices to this Agreement are related, but separate documents that are appended for convenience only. Appendices do not constitute parts of this Agreement.

e. Annual Cost Baseline means a subset of the Integrated Sitewide Baseline that DOE will establish each fiscal year incorporating the RFETS funding allocation for that fiscal year to measure and control progress during that fiscal year.

f. Approval, in relation to documents, means CDPHE and/or EPA formal consent that a document delivered for review pursuant to this Agreement contains the requisite information at the appropriate level of detail to comply with this Agreement.

g. Atomic Energy Act or AEA means the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq. and its implementing regulations.

h. Authorized Representative shall include a Party's contractors or agents acting within the scope of specifically defined authority.

i. Baseline or Integrated Sitewide Baseline describes the current scheduled scope of work for RFETS and the Site presented in a manner that is resource loaded and integrated across all Site activities using standard industry project management techniques and practices. It will

present the quantitative cost, schedule, and technical performance for a given activity and will be available for use as a standard against which to measure and control progress during the performance of the work that the baseline describes.

j. Buffer Zone means that area of RFETS designated on the map attached hereto as Attachment 2 and generally described as the roughly 6000 acres unoccupied by buildings or development that surrounds the Industrial Area at the geographic center of RFETS and extends to its borders.

k. Building and equipment disposition standards means standards establishing levels of residual contamination that must be achieved to allow disposition of buildings and equipment. These standards may vary with the nature of the disposition, i.e., whether the buildings and equipment are proposed to be released for use by persons other than DOE, are to be placed in an on-site storage or disposal facility, or are to be closed in place.

l. CAPPCA means the Colorado Air Pollution Prevention and Control Act, § 25-7-101 et seq., C.R.S., and implementing regulations.

m. CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, and the Community Environmental Response Facilitation Act (CERFA), Pub. L. No. 102-26; and the NCP and other implementing regulations.

n. CHWA Permit means a permit issued under CHWA for treatment, storage, or disposal of hazardous waste.

o. CDPHE means the Colorado Department of Public Health and Environment and/or any predecessor and successor agencies, their employees, and authorized representatives.

p. Closure, in the context of RCRA/CHWA hazardous waste management units, means actions taken by an owner or operator of a treatment, storage, or disposal unit to discontinue operation of the unit in accordance with the performance standards specified in 6 CCR 1007, § 264.111 or § 265.111, as appropriate.

q. Colorado Hazardous Waste Act (CHWA) means sections 25-15-101 et seq., C.R.S. (1982 & Supp.) as amended, and its implementing regulations.

r. Community Relations Plan or CRP means that plan described in 40 CFR 300.430(c)(ii).

s. Corrective Action (CA) means the RCRA/CHWA term for the cleaning up of releases of hazardous waste or hazardous constituents.

t. Corrective Action Decision (CAD) means the CHWA permit decision by the State selecting a corrective measure alternative or alternatives to remediate environmental concerns at an OU.

u. Corrective Action Management Unit means an area within a facility that is designated by CDPHE under Part 264 Subpart S, for the purpose of implementing corrective action requirements under sections 264.101, 265.5, or section 25-15-308, C.R.S. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility (6 CCR 1007-3 §260.10).

v. Corrective Measures Study (CMS) means the RCRA/CHWA term for the study through which the owner/operator of a facility identifies and evaluates appropriate corrective measures and submits them to the regulatory agency. The CMS and the CERCLA Feasibility Study are analogous documents and may be the same document.

w. Cost Savings means cost and productivity savings that result in excess funds being available after completion of particular activities within a fiscal year. Any such savings shall be calculated with reference to the approved RFETS Annual Cost Baseline and RFETS's EM funding allocation, including any recisions. Cost savings do not include mere deferral of activities. Cost savings are evaluated periodically throughout the fiscal year.

x. Days means calendar days unless business days are specified. Any submittal or Written Statement of Dispute that, under the requirements of this Agreement, would be due on a Saturday, Sunday, or State of Colorado or federal holiday shall be due on the following business day.

y. Deactivation means the process of placing a building, portion of a building, structure, system, or component (as used in the rest of this paragraph, "building") in a safe and stable condition to minimize the long-term cost of a surveillance and maintenance program in a manner that is protective of workers, the public, and the environment. Actions during deactivation could include the removal of fuel, draining and/or de-energizing of nonessential systems, removal of stored radiological and hazardous materials and related actions. As the bridge between operations and decommissioning, based upon Decommissioning Operations Plans or the Decommissioning Program Plan, deactivation can accomplish operations-like activities such as final process runs, and also decontamination activities aimed at placing the building in a safe and stable condition. Deactivation does not include decontamination necessary for the dismantlement and demolition phase of decommissioning, i.e., removal of contamination remaining in fixed structures and equipment after deactivation. Deactivation does not include removal of contaminated systems, system components, or equipment except for the purpose of accountability of SNM and nuclear safety. It also does not include removal of contamination except as incidental to other deactivation or for the purposes of accountability of SNM and nuclear safety.

z. Decommissioning means, for those buildings, portions of buildings, structures, systems or components (as used in the rest of this paragraph, "building") in which deactivation occurs, all activities that occur after the deactivation. It includes surveillance, maintenance, decontamination and/or dismantlement for the purpose of retiring the building from service with adequate regard for the health and safety of workers and the public and protection of the environment. For those buildings in which no deactivation occurs, the term includes characterization as described in Attachment 9, surveillance, maintenance, decontamination

and/or dismantlement for the purpose of retiring the building from service with adequate regard for the health and safety of workers and the public and protection of the environment. The ultimate goal of decommissioning is unrestricted use or, if unrestricted use is not feasible, restricted use of the buildings.

aa. Decontamination means the removal or reduction of radioactive or hazardous contamination from facilities, equipment or soils by washing, heating, chemical or electrochemical action, mechanical cleaning or other techniques to achieve a cleaner stated objective or end condition.

ab. Dismantlement means the demolition and removal of any building or structure or a part thereof during decommissioning.

ac. DOE or U.S. DOE means the United States Department of Energy and/or any predecessor or successor agencies, their employees,
and authorized representatives.

ad. Environmental Management or EM means the division within DOE responsible, inter alia, for cleanup and waste management at DOE's nuclear defense facilities, including the preparation and oversight of the budget for such activities and all successor divisions.

ae. EPA or U.S. EPA means the United States Environmental Protection Agency and any successor agencies, its employees, and authorized representatives.

af. Feasibility Study (FS) means the CERCLA term for a study undertaken to develop and evaluate options for remedial action.

ag. Field modification means a modification to work triggered as a result of encountering unanticipated conditions in the field and which must be done immediately in the opinion of a Project Coordinator to avoid either an imminent threat to human health, safety or the environment, or undue and unnecessary delay. Field modifications may also be made when opportunities are identified that allow the work to be conducted in a more cost-effective manner while not compromising safety or protection of public health or the environment.

ah. Fiscal Year (FY) denotes the current fiscal year. The federal fiscal year starts on October 1 and ends on September 30 of the following year. The federal fiscal year is designated by the calendar year in which it ends. For example, FY96 started on October 1, 1995 and ends on September 30, 1996. FY+1 means the federal budget year following the present FY. FY+2 means the federal budget year following FY+1. FY-1 means the federal budget year preceding the present FY.

ai. Historical Release Report or HRR means that report required by CERCLA § 103(c) describing the known, suspected or likely releases of hazardous substances from RFETS.

aj. Implementation Guidance Document (IGD) means the guidance document that the Parties agree DOE will use in preparing work documents for activities regulated by the Agreement. The IGD contains information regarding the technologic approach to remedial/corrective

actions and the activities regulated under this Agreement. The IGD provides guidance for what is to be included in specific decision documents, how to implement accelerated actions, RFI/RIs and CMS/FSs and the methodologies to assess human health and ecologic risk.

ak. Individual Hazardous Substance Site (IHSS) means specific locations where solid wastes, hazardous substances, pollutants, contaminants, hazardous wastes, or hazardous constituents may have been disposed or released to the environment within the Site at any time, irrespective of whether the location was intended for the management of these materials.

al. Industrial Area means that area of RFETS designated on the map attached hereto as Attachment 2 and generally described as the roughly 350 acres at the geographic center of RFETS which is occupied by the 400 buildings, other structures, roads and utilities where the bulk of RFETS mission activities occurred between 1951 and 1989.

am. Interim Measure (IM) means the RCRA/CHWA term for a short term action to respond to imminent threats, or other actions to abate or mitigate actual or potential releases of hazardous wastes or constituents.

an. Interim Remedial Action (IRA) means the CERCLA term for an expedited response action performed in accordance with remedial action authorities to abate or mitigate an actual or potential threat to public health, welfare, or the environment from the release or threat of release of a hazardous substance from RFETS.

ao. Intermediate Site Condition is the period of time during which all weapons useable fissile material and transuranic wastes will be removed from RFETS. By the end of this period, none of these materials, nor the buildings that contained them, will remain. Also by the end of this period, all low-level, low-level mixed, hazardous, and solid wastes will have been shipped off-site, disposed, or stored in a retrievable and monitored manner to protect public health and the environment. Any remaining cleanup will be completed. Activities occurring in this period are anticipated to be completed about 12 to 20-25 years from now.

ap. Land Disposal Unit means a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or concrete vault or bunker intended for disposal purposes (6 CCR 1007-3 § 268.2(c)).

aq. Lead Regulatory Agency (LRA) is that regulatory agency (EPA or CDPHE) which is assigned approval responsibility with respect to actions under this Agreement at a particular Operable Unit pursuant to Part 8. In addition to its approval role, the LRA will function as the primary communication and correspondence point of contact. The LRA will coordinate technical reviews with the Support Regulatory Agency and consolidate comments, assuring technical and regulatory consistency, and assuring that all regulatory requirements are addressed.

as. Minor modification means a modification that achieves a substantially equivalent level of protection of workers and the environment and does not constitute a significant departure from the approved decision document or the basis by which a decision was previously made

or approved, but may alter techniques or procedures by which the work is completed, e.g., a change in an RSOP that does not change the final result of the activity (e.g., alteration to a tank closure procedure that still results in a clean closure), or a change in operation or capacity of a treatment system that does not cause the system to exceed an effluent limit.

at. Mixed Waste or Radioactive Mixed Waste means waste that contains both hazardous waste and radioactive materials classified as source, special nuclear, or by-product material subject to the AEA of 1954 (42 U.S.C. § 2011 et seq.)

au. Natural Resource Trustee means a federal or State official who acts as a trustee on behalf of the public to oversee natural resources, and to recover Natural Resource Damages as appropriate. With respect to the Site, the following officials have been designated as Natural Resource Trustees:

-- Secretary of Energy (DOE)
-- Secretary of Interior (DOI)
-- Executive Director of the Colorado Department of Public Health and Environment (CDPHE)
-- Colorado Attorney General (AG)
-- Deputy Director of the Colorado Department of Natural Resources (CDNR)

av. No Action/No Further Action or NA/NFA means the determination that remedial actions (or further remedial actions) are not presently warranted; however, NA/NFA decisions are subject to revisitation at the time of the CAD/ROD in accordance with Attachment 6, and are also subject to paragraph 238 (Reservation of Rights) and to the CERCLA § 121(c) mandate for a five-year review of remedial actions that result in hazardous substances, pollutants, or contaminants remaining at the Site.

aw. Operable Unit (OU) means a grouping of IHSSs into a single management unit.

ax. Proposed Action Memorandum or PAM means the decision document that describes an accelerated cleanup activity which DOE expects can be completed during a six-month period.

ay. RCRA means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, the Federal Facility Compliance Act of 1992, and implementing regulations.

az. RCRA Facilities Investigation (RFI) means the RCRA/CHWA term for an investigation conducted by the owner/operator of a facility to gather data sufficient to characterize the nature, extent, and rate of migration of contamination from releases identified at the facility. The RFI and the CERCLA RI are analogous documents, and may be the same document.

ba. Record of Decision (ROD) means the CERCLA decision by DOE and EPA, or by EPA alone in the event EPA disagrees with a remedy proposed by DOE, selecting the remedial action or actions to remedy environmental and human health concerns at the Site.

bb. Regulated Unit means a surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982 (6 CCR 107-3 § 264.90(a)(2)).

bc. Regulatory Milestone or "milestone" means the date for which a particular event is established in accor RFETS as identified in Appendix 6 of this Agreement (e.g., a milestone associated with decommissioning which can only be accomplished after certain special nuclear material management activities are completed). Failure to meet the requirements of a regulatory milestone shall trigger liability for stipulated penalties.

bd. Remedial Activities means activities regulated under one or more of the following statutory authorities: RCRA or CHWA closure requirements for hazardous waste management units specified in this Agreement; RCRA or CHWA corrective action requirements; or CERCLA sections 104 or 106.

be. Remedial Investigation (RI) means the CERCLA term for an investigation to collect data necessary to adequately characterize the Site, assess the risks to human health and the environment, and to support the development and evaluation of remedial alternatives.

bf. Remediation waste means all:

(1) solid, hazardous, and mixed wastes;

(2) all media and debris that contain hazardous substances, listed hazardous or mixed wastes or that exhibit a hazardous characteristic; and

(3) all hazardous substances

generated from activities regulated under this Agreement as RCRA corrective actions or CERCLA response actions, including decommissioning. Remediation waste does not include wastes generated from other activities. Nothing in this definition confers RCRA or CHWA authority over source, special nuclear, or byproduct material as those terms are defined in the Atomic Energy Act.

bg. Requirements of this Agreement means provisions of this Agreement that specify:

(1) actions DOE must perform to accomplish the activities regulated under this Agreement;
(2) dates by which it must perform such actions;
(3) standards which DOE must achieve through such actions; or
(4) the manner in which such actions must be reviewed, approved, performed and overseen to comply with this Agreement and applicable environmental laws.

"Requirements of this Agreement" also includes all federal and state applicable or relevant and appropriate requirements (ARARs) incorporated in any ROD or other decision document.

bh. Response Action means a "response action" under CERCLA or a corrective action or closure under RCRA or CHWA.

bi. Retrievable Monitored Storage facility means a hazardous waste management unit that is utilized for the long-term storage of hazardous and/or mixed waste which is monitored and which is designed to allow retrieval of waste for treatment and/or disposal.

bj. Rocky Flats Environmental Technology Site ("RFETS") means the property owned by the United States Government, formerly known as the Rocky Flats Plant or Rocky Flats Site, and now known as the Rocky Flats Environmental Technology Site, including the Buffer Zone, as identified in the map in Attachment 2. RFETS does not include contaminated areas beyond the facility property boundary. When the term "site" is used with a lower case "s", it means RFETS.

bk. Scoping or Scoping Phase means that period of time, from initial conceptual development of proposed work to DOE's formal request for approval to perform work on an activity, during which DOE consults with the regulators regarding the goals, methods, breadth and desired outcome for such activity.

bl. the Site (when used with upper case "S", except in the phrase Rocky Flats Environmental Technology Site) means all contaminated areas of the Rocky Flats Environmental Technology Site and all contiguous or nearby areas that are contaminated by hazardous substances, pollutants, or contaminants (as those terms are defined in section 101 of CERCLA) and/or hazardous wastes or hazardous constituents (as those terms are defined in section 1004 of RCRA or 6 CCR 1007-3, Part 260) from sources at RFETS.

bm. Solid Waste Management Unit (SWMU) means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released (Proposed definition 55 FR 30808, July 27, 1990).

bn. Special nuclear material (SNM). The term "special nuclear material" means plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material determined to be SNM pursuant to the Atomic Energy Act. 42 U.S.C. sec. 2014 (aa).

bo. RFCA Standard Operating Protocols (RSOP) means approved protocols applicable to a set of routine environmental remediation and/or decommissioning activities regulated under this Agreement that DOE may repeat without re-obtaining approval after the initial approval because of the substantially similar nature of the work to be done. Initial approval of an RSOP will be accomplished through an IM/IRA process.

bp. State means the State of Colorado, its employees, and authorized representatives.

bq. Submittal means every document, report, schedule, deliverable, Work Description Document, or other item to be submitted to EPA and CDPHE pursuant to this Agreement.

br. Support Regulatory Agency (SRA) means the regulatory agency (EPA or CDPHE) that, for purposes of streamlining implementation of this Agreement, where applicable, shall defer exercise of its regulatory authority at one or more particular OUs until the completion of all accelerated actions. The SRA may, however, provide comments to the LRA regarding proposed documents and work.

bs. Target activities means those activities identified in Appendix 6 relating to DOE's management of special nuclear materials at RFETS. Target activities shall not be considered requirements of this Agreement. However, the Parties recognize that completion of target activities may be necessary to mitigate risks to worker and public health or the environment, and to meet subsequent regulatory milestones.

bt. Treatment, Storage, or Disposal Unit (TSD Unit) means a hazardous waste treatment, storage, or disposal unit which is required to be permitted and/or closed pursuant to RCRA and CHWA requirements as determined in the baseline.

bu. TRU waste means waste that, without regard to source or form, is contaminated with alpha-emitting transuranium radionuclides with half-lives greater than 20 years and concentrations greater than 100nCi/g at the time of assay.

bv. TRU-mixed waste means TRU waste mixed with hazardous waste.

bw. Weapons Useable Fissile Materials are (1) materials that are not transuranic or low-level radioactive or mixed wastes and that contain any isotopes of Pu (except materials containing only Pu-238) and (2) highly enriched uranium that contains at least 20 percent uranium-235.

bx. Work Description Documents means the detailed plans developed to implement work approved under this Agreement.

PART 6 LEGAL BASIS OF AGREEMENT

26. This Part constitutes a summary of the Findings of Facts and Conclusions of Law upon which CDPHE and EPA are proceeding for purposes of this Agreement. The Findings of Fact and Conclusions of Law stated in this Agreement shall not be considered admissions by DOE. However, DOE agrees not to contest the Findings of Fact or Conclusions of Law stated in this Agreement related to EPA and State authority to enforce the requirements of this Agreement.

Subpart A. Findings of Fact

27. The United States, through the U.S. Atomic Energy Commission, acquired land and established the Rocky Flats Plant in 1951. The Rocky Flats Plant began operation in 1952. The Plant's primary mission was the production of component parts for nuclear weapons. In February 1991, DOE introduced a plan to realign the Nation's nuclear weapons production program. As part of the realignment, the nuclear production functions of RFETS have been relocated to other sites (56 FR 55921). In addition, the Secretary of Energy announced in a February, 1992, Report to Congress that RFETS would no longer have a nuclear weapons mission. As a result of this realignment, RFETS' mission has changed.

28. RFETS consists of 6262 acres of federally owned land plus property beyond the boundaries that has become contaminated from sources within the boundaries of the federally-owned property. RFETS is located approximately 16 miles northwest of downtown Denver and is almost equidistant from the cities of Boulder, Golden, Westminster, and Arvada. In addition to these cities, several other communities are located near the Site, including Louisville, Lafayette, Superior, and Broomfield. Major plant structures are located within an area of 384 acres.

29. The 1994 population within a 50-mile radius of Denver consisted of approximately 2.2 million people. There are approximately 300,000 people living within 10 miles of RFETS. The surface water drainage from RFETS flows to the east and RFETS is located directly west of two drinking water reservoirs for the northern metropolitan area of Denver. The Great Western Reservoir services the City of Broomfield, and Standley Lake services the cities of Westminster, Thornton, and Northglenn. DOE has funded the construction of two major water management projects to isolate both the Great Western Reservoir and Standley Lake from any potential surface water contamination which might flow from RFETS. The Standley Lake Protection Project (i.e., Woman Creek Reservoir) was completed in early 1996 and will divert Woman Creek flows around Standley Lake. The Great Western Reservoir Replacement Project is expected to be completed in early 1997. When completed, it will provide an alternate water supply to the City of Broomfield, after which Great Western Reservoir should no longer be used as a drinking water source. Land uses adjacent to RFETS are agricultural to the west, agricultural with some industrial to the south, agricultural and very-low-density residential to the east, and agricultural and local government owned open space to the north.

30. Since establishment of the nuclear weapons production plant in 1951, materials defined as hazardous substances, pollutants, and contaminants by CERCLA, and materials defined as hazardous waste and hazardous constituents by RCRA and/or CHWA, have been produced and disposed or released at various locations at RFETS, including, but not limited to TSD Units. Certain hazardous substances, contaminants, pollutants, hazardous wastes, and hazardous constituents have been detected and remain in groundwater, sediments, surface water, and soils at the Site. Groundwater, soils, sediments, surface water, and air pathways provide routes for migration of hazardous substances, pollutants, contaminants, hazardous wastes, and hazardous constituents from RFETS into the environment.

31. The Management and Operating contractor prior to July 1975 was the Dow Chemical Company. Between July 1, 1975, and December 31, 1989, Rockwell was the Management and Operating contractor. Between January 1, 1990 and June 30, 1995, EG&G, Rocky Flats, Inc. was the Management and Operating contractor. On July 1, 1995, Kaiser-Hill Co., LLC, became the first Integrating Management Contractor for RFETS.

32. Consistent with section 3010 of RCRA, 42 U.S.C. § 6930, DOE and Rockwell notified EPA of hazardous waste activity at the Rocky Flats Plant on or about August 18, 1980. In this notification, DOE and Rockwell identified themselves as a generator of hazardous waste at the Rocky Flats Plant, and as a treatment, storage, and/or disposal facility. DOE and Rockwell also identified themselves as handling several hazardous wastes at the Rocky Flats Plant.

33. The Site was proposed for inclusion on the National Priorities List (NPL) on October 15, 1984, pursuant to section 105 of CERCLA, 42 U.S.C. § 9605. The listing became final September 21, 1989.

34. On November 1, 1985, DOE and Rockwell filed RCRA and CHWA Part A and B permit applications with both EPA and CDPHE, identifying certain generated hazardous waste streams and waste management processes.

35. On December 4, 1985, CDPHE issued a Notice of Intent to deny DOE's Part B permit application on the grounds of incompleteness.

36. On July 31, 1986, DOE, CDPHE, and EPA entered into a Compliance Agreement (1986 Compliance Agreement) which defined roles and established milestones for major environmental operations and response action investigations for the Site. The 1986 Compliance Agreement established requirements for compliance with CERCLA. Through this action, the 1986 Compliance Agreement established a specific strategy which allowed for management of high priority past disposal areas and low priority areas at the Site.

37. Pursuant to the 1986 Compliance Agreement, DOE identified approximately 178 individual hazardous substance sites and RCRA/CHWA regulated closure sites.

38. The 1986 Compliance Agreement also established roles and requirements for compliance with RCRA and CHWA through compliance with interim requirements and submittal of required permit applications and closure plans. The major TSD units previously identified which affected groundwater and soils include the Solar Evaporation Surface Impoundments, the Present Landfill, and Outside Storage Areas.

39. Through the 27 specific tasks identified in the five schedules included in the 1986 Compliance Agreement, DOE and Rockwell identified over 2000 waste generation points.

40. Remedial Investigations have indicated that elevated levels of hazardous substances including uranium, plutonium, and other metals of concern have been released into the environment. In addition, contamination from chlorinated hydrocarbons has been detected in groundwater, soils, and

sediment at the Site. These materials have toxic effects, including possible carcinogenic, mutagenic, and/or teratogenic effects on humans and other life forms.

41. The 1986 Compliance Agreement did not reflect the new requirements of SARA, including but not limited to the requirements governing federal facilities pursuant to section 120 of CERCLA. After the 1986 Compliance Agreement was issued, EPA's and CDPHE's priorities for investigation of the Site were clarified based on increased knowledge of the Site accrued from the ongoing investigation. The new priorities placed greater emphasis on those OUs that, based on information available, were known to pose the greatest risk to humans and the environment through actual or potential contact with wastes or contaminated soils, air, or water. EPA and CDPHE established criteria reflecting priorities for addressing both human health and environmental issues. This necessitated the revision of the Agreement in 1991.

42. In 1989, FBI and EPA agents executed a search warrant to confirm alleged violations of federal environmental laws and regulations at the Rocky Flats Plant. Following the search, the Department of Justice indicted Rockwell, the management and operating contractor at the time of the search, for commission of environmental crimes at the Rocky Flats Plant. In 1992, Rockwell's plea of guilty for environmental crimes was accepted in district court, and Rockwell consequently agreed to pay a fine of $18.5 million.

43. In January 1991, DOE, EPA, and CDPHE signed the Rocky Flats Interagency Agreement (IAG). The IAG established a comprehensive plan for integrating environmental restoration activities at the Site through CERCLA and RCRA corrective action. The IAG divided the remedial activities into 16 OUs, with each OU designated either a State lead, EPA lead, or joint lead. The IAG also established a schedule including 221 milestones to guide and enforce activities related to these 16 OUs.

44. During 1992 and into 1993, it became apparent that unrealized schedule and cost assumptions would make it impossible for DOE to fully comply with the IAG schedules. DOE began missing milestones in March 1993, and a series of milestones was projected to be missed. As such, in early 1994, DOE proposed an agreement to toll the stipulated penalties associated with the milestones missed and projected to be missed over a certain period. According to the terms of the Tolling Agreement, signed by the Parties on July 7, 1994, DOE paid cash penalties to EPA and the State, and conducted Supplemental Environmental Projects, for a total value of $2.8 million. The agreement tolled stipulated penalties until January 31, 1995. Subsequently, EPA and CDPHE agreed not to assess further stipulated penalties for violations of the IAG occurring after January 31, 1995.

45. On September 30, 1991, CDPHE issued a CHWA permit for a number of hazardous waste management units at RFETS. Since then, the permit has been modified a number of times to add additional units.

46. On October 6, 1992, the Federal Facility Compliance Act of 1992, Pub. L. No. 102-386 ("the FFC Act"), became law. This legislation amended the waiver of sovereign immunity found in RCRA section 6001 to extend that waiver to include civil and administrative penalties for violations of federal and State hazardous waste laws. The Act made explicit that the waiver extends to administrative orders and to all aspects of hazardous waste management. The Act also mandated

that DOE develop mixed waste treatment plans for each of its facilities subject to certain waiver and exemption provisions as specified in the act, for approval by the appropriate regulatory authority (in the case of Rocky Flats, CDPHE is the appropriate regulatory authority). Unless exempted or waived, the mixed waste treatment plan requirement applies to those mixed wastes at RFETS which must be treated to meet RCRA section 3004(m). On October 3, 1995, DOE and CDPHE signed an Agreement and Order that complies with the FFC Act requirements.

47. In 1990, DOE informed the public and the regulators that an estimated 61 pounds of plutonium resided within the exhaust duct work of various production facilities at the Site.

48. In 1992, RFETS' mission changed from the production of nuclear weapons components to managing waste and materials, cleaning up and converting RFETS to beneficial use in a manner that is safe, environmentally and socially responsible, physically secure, and cost-effective.

49. A petition to list the Preble's Meadow Jumping Mouse (Zapus hudsonius preblei) as a threatened or endangered species was made to the U.S. Fish & Wildlife Service and the U.S. Department of the Interior by the Biodiversity Legal Foundation on August 9, 1994. The Preble's Meadow Jumping Mouse is thought to be one of the rarest small mammals in North America and is found in several of the riparian areas located within the RFETS Buffer Zone.

Subpart B. Conclusions of Law.

50. Based on the Findings of Fact set forth in Subpart A (Findings of Fact) and the information available as of the date of execution of this Agreement, EPA and CDPHE have determined the following:

a. DOE is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

b. The Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C- § 9601(9).

c. DOE is the "owner" of the Site within the meaning of section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

d. Plutonium, carbon tetrachloride, trichloroethylene (TCE), tetrachloroethylene (PCE), and 1,1,1, trichloroethane (TCA), inter alia, are "hazardous substances" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14)(E). TCE, PCE and TCA are also hazardous constituents as defined by 6 CCR 1007-3, § 260.10.

e. Hazardous substances, including those described in the preceding paragraph, have been released into the environment at the Site as the term "release" is defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The Site is subject to the requirements of CERCLA.

g. Pursuant to § 6001 of RCRA, 42 U.S.C. § 6961, DOE is subject to, and must comply with RCRA and CHWA.

h. DOE is a responsible party subject to liability pursuant to 42 U.S.C. § 9607 of CERCLA, with respect to present and past releases at the Site.

i. RFETS includes certain hazardous waste treatment, storage, and disposal units authorized to operate under section 3005(e) of RCRA, 42 U.S.C. § 6925(e), and section 25-15-303(3) of CHWA, and is subject to the permit requirements of section 3005 of RCRA, and section 25-15-303 of CHWA.

j. Certain wastes and constituents at the Site are hazardous wastes or hazardous constituents as defined by section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R., Part 261. There are also hazardous wastes or hazardous constituents at the Site within the meaning of section 25-15-101(9) of CHWA and 6 CCR 1007-3, Part 261.

k. The Site constitutes a facility within the meaning of section 120 of CERCLA, 42 U.S.C. § 9620, sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, and section 25-15-303 of CHWA.

l. DOE is the owner and co-operator, and Kaiser-Hill Co., LLC, Rocky Mountain Remediation Services, Safe Sites of Colorado, Inc., and DynCorp of Colorado are co-operators, of the RFETS hazardous waste management facility within the meaning of RCRA and CHWA.

m. There is, or has been, a release of hazardous waste and/or hazardous constituents into the environment from Solid Waste Management Units and disposal of hazardous waste within the meaning of section 3004(u) of RCRA, and CHWA.

n. The submittals, actions, schedules, and other elements of work required or imposed by this Agreement are necessary to protect the public health, welfare, and the environment.

PART 7 CONSULTATION AND PROJECT COORDINATION

51. All Parties recognize that the successful implementation of this Agreement requires that each Party participate in the consultative process, as defined herein, in good faith. The Parties recognize that the consultative process represents a significant change from the manner in which the IAG was implemented. The Parties agree to utilize measures such as training programs, performance evaluation criteria, and Quality Action Teams to improve and ensure the success of the consultative process. The Parties also recognize that, as the Party responsible for project management, DOE bears a particular burden to initiate consultation with EPA and CDPHE to ensure the success of the consultative process.

52. "Consultation" and "the consultative process" mean the responsibility of one Party to meet and confer with another Party and any appropriate contractors in order to reach agreement among the Parties, to the extent possible, regarding a course of action. Consultation involves a cooperative approach to problem solving at the staff level. Consultation includes the responsibility to raise any concerns or suggestions regarding the implementation of this Agreement as soon as the concern or suggestion is identified. Consultation means timely participation at the staff or management level, as

appropriate, to reach consensus among the regulators and DOE so that there is a clear understanding of the actions or direction to be taken based upon the outcome of the consultative process.

53. Consultation, in relation to local elected officials, local government managers, RFLII, CAB, other groups and citizens, will include consideration of their advice and comments pertaining to key policy and strategic decisions such as land use, water quality, storage or disposal options, decontamination and decommissioning, soils remediation, facilities reuse, public safety, and infrastructure. These organizations and persons will be invited to participate early in the formulation of such policies and prioritization of RFETS activities. This consultative process is not intended to replace the public comment periods required by law, but will, instead, be in addition to them.

54. Consultation, in the context of developing a written document, means that the Parties and any appropriate contractors shall meet to discuss the expectations regarding the document from its initial planning stages, through serial drafts, and up to the completion of the final document. Consultation also includes meeting informally to resolve disagreements, as appropriate, before invoking the dispute resolution process.

55. On March 31, 1995, the Parties all agreed to follow a set of "Principles for Effective Dialogue and Communication at Rocky Flats." These principles are attached hereto as Appendix 2.

56. Within 30 days of the effective date of this Agreement, the Parties shall jointly finalize a plan for training all appropriate staff for the effective implementation of this Agreement. The plan will include:

a. a description of how the training will be used to foster good faith constructive implementation of the RFCA;
b. time frames for conducting training;
c. different levels of training as appropriate to the job description;
d. use of RFETS, EPA, CDPHE, or third party professional instructors;
e. provisions for conducting needs assessments as necessary to determine the need for updating training materials and implementing new employee training; and
f. involvement of RFCA negotiators from each Party to participate in training.

57. Within ten days of the effective date of this Agreement, each Party shall provide a written description to the other Parties of its internal organization, including identification of key individuals, to accomplish project coordination as described in the following paragraph. Each Party shall designate one or more individuals to perform the functions of the Project Coordinator described in this Agreement. Each Party shall also specify one or more points of contact responsible for sending, receiving, and distributing correspondence.

58. Changes to the information described in the preceding paragraph will be communicated by each Party in writing to the other Parties within ten days of such changes.

59. All Parties acknowledge that the need for project coordination is essential for the successful implementation of this Agreement. Project coordination includes, but is not limited to:

a. consultation among individuals within a Party having subject matter expertise and/or regulatory/oversight responsibility;

b. in the event of internal disagreement about a proposal, internal resolution of the Party's position in a timely fashion;

c. clear identification of individuals with authority to:

(1) make decisions regarding disputes at each level of dispute;
(2) responsibility for decision-making (decision hierarchy);
(3) authority, consistent with its agency's directives regarding contractual matters, to modify, redirect, or approve changes to work being performed pursuant to this Agreement when necessary to complete a project or achieve project acceleration or cost savings; and

d. responsibility for ensuring that the consultative process is fully utilized, as necessary, to implement this Agreement. This includes encouraging and cultivating as much informal discussion at the staff level as possible.

60. Consistent with Part 30 (Classified and Confidential Information), EPA and CDPHE Project Coordinators (and, except for paragraphs (e) and (f), their designees) shall have the authority to, among other things:

a. take samples and obtain duplicate, split or sub-samples of DOE samples;

b. ensure that work is performed properly and pursuant to EPA and CDPHE protocols, standards, regulations, and guidance, as well as pursuant to the Attachments and approved decision documents and Work Description Documents incorporated into this Agreement;

c. observe all activities performed pursuant to this Agreement (including the taking of photographs consistent with security restrictions), and make such other reports on the progress of the work as the Project Coordinator deems appropriate;

d. review records, files, and documents relevant to this Agreement;

e. in accordance with Part 10, Changes to Work, require field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures, or design utilized in carrying out this Agreement, which are necessary to the completion of the project; and

f. set regulatory milestones in accordance with this Agreement.

61. In that portion of the Site in which each is the LRA, EPA and CDPHE have the authority to direct DOE to halt, conduct, or perform any tasks required by this Agreement when the LRA Project Coordinator determines that conditions may present an immediate risk to public health or welfare or the environment. If the LRA issues such verbal request, it shall follow up such request in writing within seven days.

PART 8 REGULATORY APPROACH

62. The following activities are regulated under this Agreement:

a. remedial activities for all IHSSs identified in Attachment 3;
b. decommissioning in accordance with this Agreement and the MOU between the Parties and the DNFSB found in Appendix 1;
c. compliance with 42 U.S.C. § 3969c(b)(5) requirements for mixed wastes generated by activities regulated under this Agreement that do not meet the treatment standards promulgated pursuant to 42 U.S.C. § 6924(m) and that are not proposed to be treated by treatment capacity developed pursuant to Compliance Order No. 95-10-03-01;
d. timely completion of the milestones specified in Attachment 8; and
e. closure of underground storage tanks in accordance with Attachment 13.

63. While this Agreement regulates only those activities identified above, the Parties recognize that many activities occurring on the site are related, and that efficient use of tax dollars demands that management and regulation of all site activities be integrated. The Parties will ensure integrated management and regulation of activities both within and outside the scope of this Agreement, in part through the annual budget planning process described in Part 11. Decisions made in the course of the annual budget planning process, particularly those related to temporal prioritization of activities, may result in proposed changes to activities required by other enforceable permits, orders, or agreements that are not subject to regulation under this Agreement. CDPHE agrees to coordinate its decisions regarding these other permits, orders, etc., with decisions made in the budget planning process in Part 11.

64. In making regulatory decisions regarding activities regulated by this Agreement, CDPHE and EPA agree that each shall apply the statutory and regulatory requirements and respective agency guidance or policy positions in effect at the time a decision is made.

65. Activities that are not subject to regulation under this Agreement shall continue to be subject to any existing permits, orders, etc., including, but not limited to, the following:

a. CHWA permit No. CO7890010526
b. Hazardous Materials and Waste Management Division Settlement Agreement and Compliance Order on Consent No. 93-04-23-01 (mixed residues order)
c. Hazardous Materials and Waste Management Division Compliance Order No. 95-10-03-01 (Site Treatment Plan and Order pursuant to Federal Facility Compliance Act)
d. air quality operating permit (when issued)
e. NPDES permit No. CO-0001333

66. The Parties recognize that the activities regulated under this Agreement are subject to regulation under CERCLA, RCRA, and/or State environmental law, depending on the nature of the particular activity in question. Besides CHWA, the particular State environmental laws that may most frequently be applicable, depending on the activity, are the Colorado Air Pollution Prevention and Control Act, §§ 25-7-101, et seq., and the Colorado Petroleum Storage Tank Act, §§ 8-20.5-101, et seq. If Colorado receives delegation of the federal Clean Water Act program for RFETS, the Colorado Water Quality Control Act, § 25-8-101, C.R.S., may also be applicable to some cleanup actions. The activities that would be subject to the Colorado Petroleum Storage Tank Act are also subject to corrective action under CHWA. For those activities subject to both CHWA corrective action authority and the Petroleum Storage Tank Act, the State will defer taking remedial action under the Petroleum Storage Tank Act and will instead rely on corrective action authority, consistent with the approach described in Attachment 13. The Parties have agreed to the regulatory approach described in this Part to minimize the potential for duplicative regulation, while assuring that the legal requirements of each statute are met. Nothing in this paragraph shall be construed as an ARARs determination.

67. To implement this regulatory approach, the Parties have divided RFETS into "the Industrial Area" and the "Buffer Zone," as shown in Attachment 2. CDPHE will be the Lead Regulatory Agency (LRA) for all activities regulated under this Agreement in the Industrial Area, and EPA will be the Lead Regulatory Agency for all activities regulated under this Agreement in the Buffer Zone, as well as offsite. Conversely, CDPHE will be the Support Regulatory Agency (SRA) for activities regulated under this Agreement in the Buffer Zone and offsite, and EPA will be the Support Regulatory Agency for activities regulated under this Agreement in the Industrial Area. Notwithstanding the foregoing, CDPHE shall be the LRA regarding any facility for the retrievable, monitored storage or disposal of remediation wastes, regardless of whether such a facility is located in the Industrial Area or the Buffer Zone identified in Attachment 2.

68. Prior to the final CAD/ROD, remedial work in the Buffer Zone and offsite will be regulated by EPA as LRA pursuant to its CERCLA authority. Except as provided in the following three paragraphs, remedial work in the Industrial Area will be regulated by CDPHE as LRA pursuant to CHWA and other State environmental law that is applicable to the proposed activity, including, where appropriate, the Colorado Water Quality Control Act (if Colorado receives delegation of this program for RFETS), the Colorado Air Pollution Prevention and Control Act, and the Colorado Petroleum Storage Tank Act.

69. For purposes of implementing this Agreement, CDPHE shall carry out CERCLA authority to approve, disapprove, or modify and oversee portions of accelerated actions proposed for the Industrial Area that involve CERCLA hazardous substances that are not RCRA/CHWA hazardous constituents. CDPHE shall also carry out CERCLA authority to approve, disapprove, or modify and oversee proposed decommissioning activities in the Industrial Area. CDPHE shall also carry out authority to determine that activities or conditions in the Industrial Area constitute a release or substantial threat of release of hazardous substances to the environment. DOE may dispute those portions of State decisions regarding accelerated actions or decommissioning made under CERCLA as provided in Subpart 15B, except that if DOE appeals the SEC decision, such appeal shall be finally determined by the EPA Administrator instead of the Governor or his designee. DOE may dispute State determinations that conditions or activities in the Industrial Area constitute a release or substantial threat of release of hazardous substances to the environment in accordance with Subpart 15C, except that if DOE appeals the SEC decision, such appeal shall be finally determined by the EPA Administrator instead of the Governor or his designee. CDPHE agrees to follow EPA guidance in carrying out this CERCLA authority. This paragraph does not constitute any change to DOE's or EPA's status under CERCLA section 120(e) or Executive Order 12580, nor any limitation upon DOE's authority under the AEA.

70. Decommissioning activities shall be conducted as CERCLA removal actions, consistent with paragraph 96, the joint DOE-EPA May 22, 1995 policy regarding decommissioning of DOE facilities, and Attachment 9. Consistent with the approach described in this Part for regulating activities subject to this Agreement, CDPHE will regulate decommissioning activities in the Industrial Area under CERCLA, pursuant to the authority provided in the preceding paragraph. The Parties recognize that, at any given time, different parts of a given building may be in different stages of the operations/deactivation/decommissioning spectrum. The regulatory approach to decommissioning described in this paragraph shall be applied accordingly.

71. RFETS will be phasing out activities that generate hazardous and mixed wastes, and has or will be terminating the use and operation of processes and equipment that, because such equipment is no longer being used, may contain solid wastes that may be hazardous or mixed wastes. The Parties agree that the removal and management of hazardous and mixed wastes that are contained within shut down equipment is regulated under the CHWA and is not regulated under this Agreement. However, such activities will be prioritized and coordinated with activities regulated under this Agreement, in part through the budget review process in Part 11. Some residual hazardous, mixed and solid wastes (e.g., scale, minimal amounts of sludges, etc.) may remain in equipment after such initial removal of mixed, solid and hazardous waste inventories. The Parties agree that after such initial removal methods have been implemented, the final remediation of equipment containing residual hazardous or mixed wastes may be regulated by CDPHE as a decommissioning activity. If so, the residual wastes themselves shall be considered remediation wastes.

72. Except as provided in paragraphs 119 (Site-Wide documents) and 67, the LRA is responsible for primary review and sole approval of all decision documents and remedial work in the portion of the Site where it is the LRA. The SRA may review draft documents and provide comments on them to the LRA. However, the SRA shall defer exercising its own regulatory authority over activities regulated under this Agreement occurring in the portion of the Site where it is the SRA until the LRA has rendered a final remedial decision, as described in paragraphs 84 and 84. The Parties intend that, when acting as the SRA, EPA and CDPHE shall not be involved in the day-to-day oversight of activities regulated under this Agreement.

73. The Parties intend that, in exercising its own statutory authority, the LRA shall make remedial/corrective action decisions that protect human health and the environment in accord with its statutory requirements. The Parties also intend that the LRA's decisions should allow the SRA to determine that no further remedial action beyond what has already been required by the LRA is necessary to protect human health and the environment in accord with the statutory requirements of the SRA. To this end, the LRA shall consider the comments of the SRA when making decisions, but shall guard against the mechanical imposition of additive or duplicative requirements at each step of the process. The Parties expect this approach to satisfy the substantive requirements of CERCLA and applicable State environmental laws.

74. To ensure consistency between decisions made by EPA and CDPHE, the Parties have agreed on a number of issues that are contained in the Vision, Appendices or Attachments to this Agreement as follows:

a. Assumptions regarding the future of RFETS, including land and water uses to be protected (the Preamble to this Agreement);
b. initial risk ranking of Individual Hazardous Substance Sites (the "Environmental Restoration Ranking," Attachment 4), and a process for updating and revising this ranking;
c. An Action Levels and Standards Framework, including action levels for contaminated soils and groundwater, and action levels and standards for surface water (Attachment 5);
d. criteria for deciding when no further remedial action is required (Attachment 6); and
e. Building and equipment disposition standards (Attachment 9).

75. The Action Levels and Standards Framework, Attachment 5, establishes action levels for ground water and soil as well as action levels and cleanup standards for surface water. Attachment 5 also establishes a deadline for setting additional action levels for soil and interim cleanup levels for soil. Action levels and standards are requirements of this Agreement, but exceedance of an Action Level is not subject to penalties. The Framework action levels describe numeric levels of contamination in ground water, surface water, and soils which, when exceeded, trigger an evaluation, remedial action and/or management action. The Framework surface water standards are in-stream contaminant levels that, contingent on action by the Colorado Water Quality Control Commission to align stream classifications and standards with the Action Levels and Standards Framework, the regulators will require DOE to meet for activities undertaken prior to the final CAD/ROD, and which constitute the Parties' current joint recommendation for the CAD/ROD. (If the Colorado Water Quality Control Commission does not modify the existing stream standards, the Action Level Framework will be modified accordingly.) In-stream concentrations that exceed the Framework action levels at points of evaluation identified in the Framework will trigger the need for DOE to perform an evaluation and/or mitigating action. It is the Parties' intention to develop an Integrated Water Management Plan that assures the Framework standards for radionuclides and non-radionuclides will not be exceeded at the points of compliance. Nevertheless, in-stream concentrations that exceed the Framework standards at points of compliance identified in the Framework will trigger mitigating action by DOE and penalty liability in accordance with paragraph 219. If mitigating action becomes necessary, DOE will obtain approval for such activities through the appropriate decision document and will incorporate such activities in the baseline.

76. The Parties intend DOE to develop, and the regulators to approve, decision documents that incorporate the Framework cleanup standards and action levels. While the Parties recognize that it would be premature for EPA to make an ARARs determination at this time, the Parties expect that the Action Level Framework action levels and cleanup standards will inform EPA's ultimate decision. Similarly, the Parties recognize that the Framework cleanup standards are not State water quality standards, which only the Colorado Water Quality Control Commission has the authority to establish, although most are consistent with such standards. The Parties have agreed to involve affected downstream water users in developing the Integrated Water Management Plan, and in coordinating petitions to the Colorado Water Quality Control Commission for changes to water quality standards, including for temporary modifications (see Appendix 5).

77. The Parties recognize that compliance with surface water cleanup standards at RFETS has implications associated with storm water management, pond operations, and public safety because of the need to maintain the integrity of the dams at RFETS. The Parties anticipate that, in the event of a dam breach or failure, there may be elevated levels of contaminants released into the surface waters at RFETS. The Parties, therefore, agree that management of the RFETS ponds to prevent a dam breach or failure may be necessary to assure dam safety.

78. The Parties have also agreed to develop a set of guidelines for reviewing documents and proposed work that will allow DOE to use the same basic approach regardless of whether a proposed document or proposed work relates to the Industrial Area or the Buffer Zone. These guidelines will be contained in the IGD, in Appendix 3. While these guidelines are not binding on DOE, CDPHE and EPA will use them in reviewing the adequacy of documents submitted and work proposed by DOE.

79. To expedite remedial work and maximize early risk reduction at the Site, the Parties intend to make extensive use of accelerated actions to remove, stabilize, and/or contain Individual Hazardous Substance Sites (IHSSs). Focussing on IHSSs rather than OUs will allow most remedial work to be reviewed and conducted through one of the accelerated review and approval processes described in Part 9, rather than the RI/FS process. The Parties have agreed upon a risk ranking of the IHSSs, which is contained in Attachment 4. The ranking of IHSSs will be reviewed annually, and may be revised as appropriate. The Parties will consider the risk ranking and other factors to prioritize work for the baseline, in accordance with Part 11 (Budget and Work Planning).

80. The Parties recognize that the facility described in this paragraph providing for retrievable, monitored storage of remediation wastes may be converted at a future date to a disposal facility. The Parties also recognize that some remedial actions (e.g., in-place closures) may incorporate disposal as an initial proposal. The Parties anticipate that consistent with the Preamble Objectives, retrievable, monitored storage of remediation wastes (except for TRU or TRU mixed wastes), with an option for conversion to disposal in-place in accordance with future decision-making, may be accomplished through use of a Corrective Action Management Unit (CAMU). The Parties agree that the design criteria for the facility described in this paragraph shall be the same whether the facility is for the retrievable, monitored storage of remediation wastes or for the disposal of remediation wastes. Specifically, the facility described in this paragraph must ensure retrievability of wastes and protection of human health and the environment through a combination of requirements that include, but are not limited to: detection and monitoring/inspection requirements; operating and design requirements, including cap/liner system that meets the requirements as set forth in 6 CCR § 1007-3, Part 264, Subpart N; a ground water monitoring system; and requirements for responding to releases of wastes or constituents from the units. In addition, where necessary for protection of human health and environment, waste treatment will be required. If DOE proposes a CAMU, it is the expectation of the Parties that if the application meets the appropriate substantive criteria, CDPHE will issue a CAMU designation for storage or disposal in a timely fashion, consistent with its general commitment to expedite regulatory approval of those activities required to achieve the Preamble Objectives. If DOE proposes a storage CAMU, it may request that CDPHE make findings of fact as to whether the proposed facility also meets the requirements for a disposal CAMU that are in effect at the time of the request. CDPHE agrees to make such findings upon request. The Parties also agree that a CAMU for remediation wastes and another RCRA/CHWA Subtitle C unit for storage or disposal of process wastes (except TRU and TRU mixed wastes) not regulated under this Agreement may be co-located. The review, approval and oversight of any unit for process wastes is also not regulated under this Agreement, but by CDPHE under the existing CHWA permit, as set forth in Appendix 8.

81. For purposes of this Agreement, wastes generated by activities regulated under this Agreement are remediation wastes. All such wastes, except for TRU and TRU mixed wastes, are suitable for storage or disposal in an approved on-site CAMU, in accordance with the terms of any such approval.

82. Any proposal for a centralized facility at RFETS for the retrievable, monitored storage or disposal of remediation wastes shall be subject to approval only by CDPHE as the LRA, regardless of its location. Notwithstanding any other provision of this Agreement regarding the role of the SRA, EPA may participate fully in the review and consultative processes related to such a facility. In addition, EPA shall have the right to invoke the dispute resolution provisions of Part 15E regarding any CDPHE decision related to such a facility, within 15 days of the issuance of any such decision.

83. Following implementation of all planned accelerated actions, CDPHE and EPA shall evaluate the Site conditions and render final remedial/corrective action decisions for each OU. Notwithstanding the emphasis on accelerated actions and IHSS-based approach, the Parties recognize that the final remedial/corrective action decisions may require some additional work as specified in the CAD/ROD to ensure an adequate remedy.

84. Following implementation of all planned accelerated actions, for the Industrial Area OU, CDPHE will make a final corrective action decision for hazardous constituents pursuant to its CHWA regulatory authority, and DOE, consistent with its authority under CERCLA § 120, shall make a proposed remedial decision under CERCLA. CDPHE shall make a recommendation to EPA whether to concur with DOE's proposed remedial decision for radionuclides and other hazardous substances that are not hazardous constituents. EPA, consistent with CERCLA § 120, shall review DOE's proposed remedial decision and CDPHE's recommendation thereon, and shall then concur or non-concur with DOE's proposed remedy. EPA's decision regarding radionuclides and other hazardous substances that are not hazardous constituents shall incorporate CDPHE's recommendation, so long as EPA determines that the recommendation is consistent with CERCLA. EPA and DOE, consistent with CERCLA § 120, shall also review CDPHE's corrective action decision and shall issue a concurrence remedial action decision under CERCLA, so long as CDPHE's selected corrective action decision is consistent with CERCLA.

85. Following implementation of all planned accelerated actions, for those OUs in the Buffer Zone or offsite, EPA and DOE, consistent with CERCLA § 120, will make a final remedial decision pursuant to CERCLA. CDPHE shall review the final remedial decision and shall issue a concurrence corrective action decision under CHWA, so long as the final remedial action is consistent with CHWA and applicable State law.

PART 9 REVIEW AND APPROVAL OF DOCUMENTS AND WORK

Subpart A. General

86. The provisions of this Part establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and responses to comments regarding submitted documents. As of the effective date of this Agreement, all documents identified herein shall be prepared, distributed, reviewed, approved or disapproved, and subject to dispute resolution in accordance with this Part. The Parties shall implement the provisions of this Part in consultation with each other. Schedules for submittal of documents are contained in the baseline in Appendix 4. Procedures in this Part for the review and approval of CAD/RODs shall not alter, but shall supplement the procedures set forth in paragraphs 83 and 84.

87. DOE shall notify the designated Natural Resource Trustees, local elected officials, and the Citizens Advisory Board (CAB) of the issuance of any documents, the deadlines for submitting comments thereon, and a notation that comments submitted after the specified deadlines may not be considered. Upon request, DOE shall provide each Natural Resource Trustee and the CAB with a copy of any document. DOE shall place a copy of any document in the Repositories at the same time it forwards the document to CDPHE and EPA. If any of the State Natural Resource Trustees elect to comment on any documents, CDPHE will forward their comments to DOE and EPA. Federal Natural Resource Trustees and the CAB will forward their comments directly to DOE, EPA and CDPHE.

88. Except as provided in paragraph 119, the LRA shall be responsible for review and approval of all decision documents received pursuant to this Agreement. When drafting comments, the LRA shall consider the Parties' expectation that both regulators should endorse the same final remedial decision. The LRA shall rely on the IGD as the primary guidance in evaluating the adequacy of submitted documents.

89. The appropriate Project Coordinators from each Party shall meet monthly, except as otherwise agreed, to review and jointly evaluate the progress of work being performed on the documents and implementation thereof. The appropriate representatives shall discuss a document in an effort to reach a common understanding of expected content and purpose prior to preparing the draft document, during the LRA's review of the submitted document, and during DOE's preparation of the final document. During such discussions, the LRA and DOE Project Coordinators will agree on the estimated review time for the document, which the Parties agree to minimize, consistent with the LRA's statutory responsibilities. If the Parties cannot agree on a review time, the LRA shall select the review time consistent with the standard described in the preceding sentence. In addition, staff level discussions shall be conducted throughout the document preparation and review process to avoid major revisions to draft documents.

90. Representatives of each Party shall make themselves readily available during the review and comment period for consultation and comments on documents. Oral comments made during such discussions need not be the subject of a written response by the DOE at the close of the review and comment period.

91. When submittal of a document is defined as a regulatory milestone, compliance with the regulatory milestone is defined as DOE's submittal, by the date specified in Attachment 8, of a document that is approved by the appropriate LRA. Documents disapproved shall not be defined as compliant with the regulatory milestones. If the draft document is disapproved and subsequently revised and approved prior to the defined regulatory milestone, then this shall be deemed compliant with the regulatory milestone.

92. Comments which significantly expand previously approved workscope may be considered good cause for regulatory milestone modifications. In that case, DOE shall formally notify the LRA within 30 days of receipt of comments and request appropriate changes to the affected milestones.

93. Documents subject to this Part and listed in paragraphs 118 and 119 shall be designated as decision documents. Such documents may or may not have an associated regulatory milestone. DOE may

not invoke dispute resolution regarding comments submitted on draft decision documents. It may only invoke dispute resolution for decisions to disapprove the proposed final decision documents. All other non-decision documents, such as those listed in paragraph 121, are not subject to the review and approval provisions of this Part. Non-decision documents include input or feeder documents to a decision document, documents that act as discrete portions of decision documents, and certain program-wide support and guidance documents. These documents do not have regulatory milestones associated with them; however, DOE recognizes that their submittal in a timely manner facilitates meeting regulatory milestones and ensuring expeditious cleanup of the Site. Through the consultative process, DOE will keep the regulators informed regarding the content of these documents and will endeavor to incorporate all of the comments made by the regulators to avoid subsequent conflict, disapprovals or the issuance of stop work orders. DOE's failure to resolve the regulator's concerns, as expressed in its comments on a non-decision document, may result in subsequent disapproval of a related decision document.

94. DOE shall complete and transmit documents listed in this Part in accordance with the baseline in Appendix 4. Following receipt of comments on the draft document, DOE shall complete and transmit the proposed final documents in accordance with the baseline.

95. In accord with the June 1994 DOE Secretarial Policy on NEPA issues, decision documents prepared by DOE for activities required under this Agreement are to incorporate NEPA values, to the extent practicable. Therefore, separate NEPA reviews will not ordinarily be required for such activities. However, DOE may choose, after consultation with stakeholders, or as a matter of policy, to conduct separate NEPA reviews for a proposed action, for example, the siting, construction, and operation of treatment, storage or disposal facilities that, in addition to supporting an action required under this Agreement, also serve waste management or other purposes. DOE may also perform NEPA reviews for proposed actions not regulated under this Agreement but which may affect activities conducted under this Agreement.

Subpart B. Document and Work Review and Approval Processes

96. All remedial work at the Site, including all non-time critical removal actions, shall be conducted either as an accelerated action for one or more IHSSs, a closure plan, or pursuant to a CAD/ROD for an OU. All remedial work shall be implemented considering the factors described in paragraph 145 (Budget and Work Planning). DOE shall not commence any activity subject to approval under this Part unless it has been approved by CDPHE or EPA or, in the case of a disapproval, until the dispute resolution process has been exhausted. DOE recognizes that if it proceeds with work that has been disapproved, it may be subjected to enforcement action by CDPHE or EPA. There are three types of accelerated actions:

a. Interim Measure/Interim Remedial Action (IM/IRA)
b. Proposed Action Memorandum (PAM)
c. RFCA Standard Operating Protocol (RSOP)

IM/IRAs apply to accelerated actions that are estimated to take more than six months from the time of commencement of physical remedial work to complete. PAMs apply to accelerated actions that are estimated to take less than six months from time of commencement of physical remedial work to

complete. RSOPs apply to accelerated actions that are routine and substantially similar in nature, for which standardized procedures can be developed. RSOPs may incorporate "Alternative Operating Scenarios" as provided in the Air Quality Control Commission's regulations to implement CAPPCA requirements in lieu of individual construction permits from the Air Pollution Control Division. Closure Plans apply to regulated hazardous waste management units. CAD/RODs apply to the final corrective/remedial decision made for an OU following implementation of all accelerated actions.

97. Closure of permitted or interim status units may be performed either pursuant to a separate closure plan or an accelerated action decision document. Closure Plans shall follow the relevant review process described in 6 CCR 1007-3, Parts 264 or 265 and/or Part 100 for the hazardous waste unit(s) in question. When a decision document incorporates a modification to an approved closure plan for a permitted unit, CDPHE shall modify the permit to incorporate the approved closure plan modification. The requirements for closure of interim status units that are regulated under this Agreement are set forth in Attachment 10. Compliance with applicable CHWA closure requirements when the closure is performed as an accelerated action, including any requirements for post-closure permits, will be addressed in the PAM, RSOP or IM/IRA.

98. IM/IRAs, CAD/RODs, and PAMs approved prior to the effective date of this Agreement shall be implemented as requirements of this Agreement. Accelerated actions, including those that are in lieu of closure plans, do not require separate CHWA permit modifications or permits. Instead, CHWA requirements that are applicable to the proposed action, including any requirements for post-closure permits, will be in the PAM, IM/IRA, or RSOP.

99. If an accelerated action in the Industrial Area would trigger the requirement for a permit described in paragraph a. or b., CDPHE commits that the procedural requirements for obtaining such permit shall not result in any additional time for approval of that activity than would otherwise be required under this Agreement.

100. To further streamline the work approval process, CDPHE agrees that DOE may apply for a single construction permit that could cover multiple activities which would otherwise require air construction permits. Such a permit application could incorporate "Alternative Operating Scenarios" in accord with state air quality regulations. Such permit application may, but need not, be made in conjunction with a specific proposed accelerated action. In such an application, DOE may develop a "worst case scenario" that projects emissions levels, numbers and types of pollutants, volumes of soil to be excavated that would constitute an upper bound defining the largest excavation project anticipated, and equipment needs. Once approved, DOE would not need additional air quality construction permits for subsequent activities that fall within the limits established in the alternative operating scenario.

101. The Parties recognize that, in the Industrial Area OU, activities regulated under this Agreement will require the coordination of activities between a number of State environmental agencies or departments, whether or not separate permits are required. CDPHE agrees, absent circumstances beyond its control, to provide adequate coordination of, and timely response from, its various agencies and other State departments. CDPHE also agrees to provide DOE with guidance so that DOE can submit a single draft document that meets both the information requirements of applicable

permits and the information needed for CDPHE to make a determination under CHWA. All State-imposed conditions on the proposed action shall be contained in the PAM, IM/IRA, consolidated review process decision, or CAD/ROD.

102. CDPHE shall determine in the scoping phase of any proposed action in the Industrial Area whether a State permit will likely be required, consistent with the following two paragraphs. If, during the scoping phase of a proposed action, DOE provides CDPHE with adequate information to determine that a permit is required, but CDPHE fails to identify the need for a State permit until after the scoping phase of a proposed action, the appropriate review process described in one of the following two paragraphs shall still be followed. However, DOE shall be entitled to an extension of any affected regulatory milestone, and CDPHE shall, absent circumstances beyond its control, mitigate any delay from the failure to identify the need for the permit. If CDPHE fails to identify the need for a permit during the scoping phase due to DOE's failure to provide the necessary information, the appropriate review process described in one of the following two paragraphs shall still be followed. CDPHE shall still use its best efforts to mitigate any delay from the failure to identify the need for a permit, but DOE shall not be entitled to an automatic extension of any affected regulatory milestone.

103. If, during the scoping phase for any accelerated action proposed to be implemented in the Industrial Area, CDPHE determines that the proposed action will likely require either:

a. a minor source construction permit from the Air Pollution Control Division (APCD) or a minor modification to a construction permit from the APCD that does not trigger any major source requirements under the Prevention of Significant Deterioration program of Part C of the Federal Clean Air Act (see § 25-7-201, C.R.S.) or major non-attainment permit requirements under Part D of the Federal Clean Air Act (see § 25-7-301, C.R.S.); or modification of any operating permit from the APCD that is not a significant permit modification under Regulation 3 of the Colorado Air Quality Control Commission; and/or

b. following delegation of the federal program to the State for RFETS, a discharge permit from the Water Quality Control Division,

the consolidated review process described in the following paragraph shall be used.

104. Following scoping, during which CDPHE shall work with DOE to ensure the adequacy and completeness of DOE's submittal of the relevant draft permit application/document (e.g, draft IM/IRA, PAM, or RSOP), CDPHE shall issue a draft permit decision for public comment. The public comment period for the permit decision shall run for the same period of time as the public comment period for the decision document, and the two documents shall be packaged together. Following the public comment period, CDPHE shall issue a decision on the accelerated action and the necessary State environmental permits, if any. This decision shall be subject to dispute resolution by DOE under Part 15B. The final resolution of any dispute shall constitute approval or disapproval of the action under the CHWA and of the relevant permit decision under the CAPPCA, and may be appealed in accordance with applicable law.

105. If, during the scoping phase for any accelerated action proposed to be implemented in the Industrial Area, CDPHE determines that the proposed action will likely require a permit or modification to a permit from the APCD other than those described in the preceding subparagraph a., DOE shall follow the appropriate substantive and procedural requirements of the Colorado Air Quality Control Commission in complying with the CAPPCA.

106. Remedial activities that are planned to be accomplished in less than six months may be approved under the PAM process described in this paragraph, unless CDPHE determines that an environmental permit would be required, as described in paragraphs 103 and 105. Such remedial activities may be identified through the annual budget and work planning process, or they may be identified during the fiscal year. Upon agreement of the LRA that such an action is necessary, DOE shall prepare a draft PAM in consultation with the LRA. The draft PAM shall contain a brief summary of data for the site; a description of the proposed action; an explanation of how waste management considerations will be addressed; an explanation of how the proposed action relates to any long-term remedial action objectives; proposed performance standards; all ARARs and action levels related to the proposed action; and an implementation schedule and completion date for the proposed action. DOE will issue the draft PAM to the LRA for its review and simultaneously make it available for a thirty-day public comment period, unless a longer period is required consistent with the LRA's statutory authorities. Within two weeks of the close of the public comment period, DOE shall incorporate public comments, as appropriate, prepare a response to comments, and submit both the revised PAM and response to comments to the LRA. The LRA shall have seven calendar days to approve or disapprove the revised PAM and response to comments, but it may extend this period by an additional seven calendar days, based on good cause communicated to DOE in a timely fashion. If the LRA disapproves the revised PAM, it shall state the changes that DOE must make to receive approval. DOE shall then have 14 days to incorporate the LRA's changes or invoke dispute resolution. If the LRA does not approve or disapprove the revised PAM within seven days (or 14 days, if it extends the time for a decision), the revised PAM is deemed approved as submitted.

107. Remedial activities that are planned to take more than six months may be approved under the IM/IRA process described in this paragraph, unless CDPHE determines that an environmental permit would be required, as described above, or unless the activity constitutes a Class 3 permit modification, in which case the Parties will follow the procedure set out in the next paragraph. Such remedial activities may be identified through the annual budget and work planning process, or they may be identified during the fiscal year. Upon agreement of the LRA that such an action is necessary, DOE shall prepare a draft IM/IRA in consultation with the LRA. The draft IM/IRA shall contain a brief summary of data for the site, a description of the proposed action, an explanation of how waste management considerations will be addressed, an explanation of how the proposed action relates to any long-term remedial action objectives, proposed performance standards, all ARARs and action levels related to the proposed action; and an implementation schedule and completion date for the proposed action. As part of the scoping process described in paragraph 89, DOE will provide the draft IM/IRA to the LRA 14 days before issuing it for the agency review and public comment described in this paragraph. DOE will issue the draft IM/IRA to the LRA for its review and simultaneously make it available for a public comment period that shall last no less than 45 and no more than 60 days. Within the time frame determined during the scoping process described in paragraph 89, DOE shall incorporate public comments, as appropriate, prepare

a response to comments, and submit both the revised IM/IRA and response to comments to the LRA. The LRA shall approve or disapprove the revised IM/IRA and response to comments within the time period set during the scoping process described in paragraph 89, unless the LRA extends this period based on good cause communicated to DOE in a timely fashion. If the LRA disapproves the revised IM/IRA, it shall state the changes that DOE would have to make to receive approval. DOE shall then have 21 days to incorporate the LRA's changes or invoke dispute resolution. If the LRA does not approve or disapprove the revised IM/IRA within the time allotted (including any extension of time), any milestone associated with the IM/IRA shall be suspended and will be re-established as agreed by the Parties. If the Parties cannot agree, EPA and CDPHE shall unilaterally re-establish the milestone. A unilaterally re-established milestone shall be extended by a period no less than the excess time taken by the LRA to render the IM/IRA decision.

108. If there is an activity that DOE expects to undertake in the Industrial Area which is an activity listed as requiring a Class 3 permit modification pursuant to CHWA regulations, and for which no permit by rule would be available, DOE shall--prior to submitting the draft IM/IRA to CDPHE, but after the scoping period--make the draft IM/IRA available for a 60 day public comment period. DOE shall transmit all comments to CDPHE for its subsequent review. CDPHE shall use its best efforts to issue its draft decision, including applicable requirements, and other information as required by current regulation within 30 days of receipt of the draft IM/IRA and public comments. This draft decision shall itself be made available for public comment for 60 days, with an opportunity for public hearing. Within 30 days of the close of the public comment period, CDPHE shall revise its proposed decision accordingly and respond to significant public comment. If CDPHE denies DOE the authority to proceed with the activity or imposes conditions thereon with which DOE disagrees, DOE may invoke dispute resolution.

109. Since the beginning of FY 1996, DOE has engaged members of the public in an on-going conversation, including a dozen meetings and work sessions, regarding whether and how to construct a storage or disposal facility for remediation wastes at RFETS. As a result of this interaction, DOE's ideas about the design and purposes of such a facility have evolved. DOE anticipates that it will be applying during 1996 for designation of a storage CAMU. The Parties commit to a meeting with the public to discuss the CAMU application prior to its submission.

a. When DOE determines that it is prepared to seek designation of a CAMU for storage of remediation wastes, DOE shall submit a draft IM/IRA to EPA and CDPHE which satisfies applicable regulatory criteria for designation and the criteria described in paragraph 80, and presents an analysis of alternatives showing that DOE has considered the following:

(1) worker safety,
(2) protection of public health and the environment,
(3) transportation,
(4) facility design, containment and monitoring,
(5) institutional controls,
(6) cost, and
(7) community acceptance.

The Parties recognize the special expertise of CDPHE with respect to the design of hazardous waste storage and disposal facilities. Therefore, with respect to DOE's obligation to incorporate NEPA values into any decision document associated with the designation of a CAMU at RFETS, CDPHE will be designated by DOE as a cooperating agency to assist DOE in the analysis of reasonable alternatives, including the "No Action" alternative. As a cooperating agency, CDPHE's participation will be sought by DOE early in the alternatives analysis process to ensure CDPHE's special expertise is available to DOE as it incorporates relevant NEPA values into any decision document associated with the designation of a CAMU.

a. Within 45 days of receipt of DOE's draft IM/IRA, CDPHE shall determine that the IM/IRA meets or fails to meet the criteria in subparagraph (a). If CDPHE determines that the draft fails to meet the criteria, it shall, at the end of its 45 day review, explain with specificity the necessary modifications and allow DOE to resubmit within 30 days or to invoke dispute resolution within 14 days.If CDPHE determines that the application meets the criteria described in subparagraph (a), it shall issue the draft IM/IRA for public comment for a period of 60 days.

b. Within 30 days of the close of the public comment period, CDPHE shall review the comments received and modify the draft if appropriate. The agency shall also prepare a response to significant public comments during this time. At the end of this 30 day period, if CDPHE still agrees that the IM/IRA as modified meets the regulatory criteria for designation and the criteria in paragraph 80, CDPHE shall designate the storage CAMU. If CDPHE has determined that the IM/IRA does not meet these same criteria, it shall state the changes that DOE must make to receive approval.

c. Time is of the essence regarding a final decision on a storage CAMU for remediation wastes. CDPHE recognizes this, and has therefore committed to the review times set forth in this paragraph. CDPHE's failure to meet these time frames does not result in approval of the proposed document.

110. If DOE determines, after a process of public consultation that shall occur in accord with the Community Relations Plan, and after consideration of:

a. protection of public health and the environment;
b. worker safety;
c. transportation;
d. facility design, containment and monitoring;
e. institutional controls;
f. cost; and
g. community acceptance

that it intends to proceed with either (i) building a new on-site disposal facility for remediation waste, or (ii) converting or upgrading an existing unit at Rocky Flats into a disposal facility for remediation wastes, DOE shall apply to CDPHE in accord with then-applicable law. The application shall describe the types of wastes that would be disposed, the location of the facility

and its design, along with other information as specified in the IGD; include an analysis of alternatives; and demonstrate that the facility would meet then-applicable legal requirements. This application shall be processed either as an accelerated action pursuant to the process established in RFCA paragraphs 89, 107 and 108, or as part of the CAD/ROD, whichever is appropriate at the time, as well as in a manner that is consistent with then-applicable requirements.

111. DOE shall submit appropriate Air Pollution Emission Notices as part of the draft decision document for all work, regardless of whether it is to be performed in the Industrial Area or the Buffer Zone. This information shall be available for inspection at RFETS.

112. In responding to draft decision documents that are not Site-Wide documents, the LRA shall obtain comments from and, where appropriate, consult with the SRA. Following such consultation with the SRA (if any) the LRA shall submit a single set of consistent, consolidated comments to DOE on or before the close of the comment period. The LRA agrees to use its best efforts to provide a comprehensive set of comments on draft documents to DOE so as to avoid, to the extent possible, raising issues of first impression at a later stage. Comments shall be provided with adequate specificity so that DOE may respond to the comments and, if appropriate, make changes to draft documents. If the LRA takes more time than allotted pursuant to paragraph 89 to respond to a draft decision document, such a delay may constitute good cause for regulatory milestone modifications.

113. For Site-Wide documents, EPA and CDPHE shall attempt to reach concurrence and provide DOE with a single set of consistent, consolidated comments to DOE on or before the close of the comment period. EPA and CDPHE agree to use their best efforts to provide a comprehensive set of comments on draft documents to DOE so as to avoid, to the extent possible, raising issues of first impression at a later stage. Comments shall be provided with adequate specificity so that DOE may respond to the comments and, if appropriate, make changes to draft documents. If the regulators take more time than allotted pursuant to paragraph 89 to respond to a draft decision document, such delay may constitute good cause for regulatory milestone modifications.

114. Following the close of the review and comment period for a draft decision document (including any public comment), DOE shall prepare a proposed final decision document. In so doing, it shall give full consideration to all written comments submitted by the LRA (or, in the case of Site-Wide documents, EPA and CDPHE). DOE shall seek clarification of the intent and purpose of any comment from the LRA (or, in the case of Site-Wide documents, EPA and CDPHE) that DOE finds is unclear before preparing the proposed final decision document.

115. The LRA (or, in the case of Site-Wide documents, EPA and CDPHE) shall review the proposed final decision document and shall approve or disapprove it. If the proposed final decision document is approved, that document shall become final. If the LRA disapproves a document, it must explain the necessary modifications or reasons for disapproval and delineate the actions that must be taken for approval. If the proposed final decision document is disapproved, DOE shall revise and re-submit those portions of the document that require revision in compliance with the notice of disapproval, unless DOE invokes dispute resolution pursuant to Subpart 15B or 15E, as appropriate, within the period allowed for re-submittal. When dispute resolution is invoked on a

proposed final document, work may be stopped in accordance with the procedures set forth in Part 14.

116. The following documents have already been approved. Complete references to these documents are contained in Attachment 12. These documents are located in the public repositories specified in Attachment 7, and are incorporated by reference into this Agreement:

a. Quality Assurance Plan
b. Historical Release Report (HRR)
c. Existing ER Standard Operating Procedures
d. Community Relations Plan (CRP)
e. Treatability Study Workplan
f. Health and Safety Plan
g. Plan for Prevention of Contaminant Dispersion
h. Background Geochemical Characterization Report
i. previously approved PAMs, IM/IRAs, and CAD/RODs listed in Attachment 12

117. The Attachments to this Agreement listed below may be modified through the process described in paragraphs 89, 113, 114 and 115.

a. OU Consolidation Plan
b. Environmental Restoration Ranking
c. Action Levels and Standards Framework
d. Building and Equipment Disposition Standards
e. Criteria for No Action/No Further Action/No Further Remedial Action Decisions
f. RCRA Closure for Interim Status Units

Modification of Attachments listed above in (c)-(f) are subject to public review and comment.

118. The following decision documents are subject to the review and approval of the appropriate LRA as provided in this Part. DOE shall complete and transmit these documents as described in the baseline, or in accordance with a regulatory milestone.

a. RFI/RI Work Description Documents
b. RFI/RI Reports
c. CMS/FS Reports
d. IM/IRA Decision Documents
e. Closure Plans
f. Corrective/Remedial Design Plans
g. Corrective/Remedial Design Work Description Documents
h. Sampling and Analysis Plans
i. IM/IRA Implementation Documents
j. Closeout Reports
k. PAMs
l. Decommissioning Operations Plans for major facilities, such as Buildings 371, 771, 776/777, 707 and 991

m. Future RSOPs for activities regulated under this Agreement that are likely to occur in only one OU
n. Treatability study reports for activities related to one OU

119. The following Site-Wide documents are subject to the review and approval of CDPHE and EPA. DOE shall complete and transmit the following Site-Wide documents as described in the baseline, when a modification of the documents is proposed, or in accordance with a regulatory milestone:

a. the IGD and any updates thereto
b. CADs/RODs
c. Draft Permit Modifications for CADs/Proposed Plans
d. Updates to the CRP
e. Future Standard Operating Procedures for activities covered by this Agreement that are likely to occur in more than one OU
f. Treatability Study Reports for activities that are related to more than one OU
g Integrated Monitoring Plan
h. Updates to the Environmental Restoration Ranking
i. Integrated Water Management Plan
j. decision documents proposing treatment for remediation wastes from both the Industrial Area and the Buffer Zone
k. Decommissioning Program Plan
l. annual updates to the HRR

120. DOE shall complete and transmit the following non-decision documents in accordance with the baseline for the LRA's (or, in the case of Site-Wide documents, both EPA's and CDPHE's) review and comment. Technical memoranda and other non-decision documents that modify previously approved work shall be approved through the appropriate modification process in Part 10.

a. Baseline Risk Assessment Technical Memoranda
b. CMS/FS Technical Memoranda
c. RFI/RI Work Description Document Technical Memoranda
d. Geochemical Characterization of Background Surface Soils
e. Other support documents for any activity covered by this Agreement as deemed appropriate by the Parties
f. Progress reports described in Part 21
g Reconnaissance Level Characterization Reports

121. The following draft documents shall be subject to public comment:

a. Draft Permit Modifications/Proposed Plans
b. PAMs
c. IM/IRAs
d. Closure Plans
e. RSOPs

The length of the public comment period shall be defined during scoping. Other documents listed in paragraphs 118 and 119 that are approved through the PAM or IM/IRA process, including, for example, RSOPs, Decommissioning Operations Plans, and the Decommissioning Program Plan, shall go to public comment through the PAM or IM/IRA process.

122. DOE shall update quarterly the list of all approved documents, other approvals, and final resolutions of dispute contained in Attachment 12, and shall provide this list to the other Parties and place a copy in each of the Repositories. All draft and final documents subject to public comment, as well as their associated responses to comments, shall also be placed in the Repositories.

PART 10 CHANGES TO WORK

123. The Parties intend that, using the consultative process, they can substantially streamline the processes for modifying or revising approved work or decision documents that may be necessary arising from planned or unforeseen circumstances during the course of implementation. This Part establishes change control procedures for RSOPs, PAMs, IM/IRAs and CAD/RODs. The goal of the change control process is to keep previously approved elements of work at RFETS moving towards a timely, cost-effective completion while satisfying the underlying objective for which original approval was granted. For work being done under other types of decision documents, the Project Coordinators shall establish appropriate time frames and procedures consistent with the nature of the processes described below.

124. DOE shall evaluate baseline and regulatory milestone impacts associated with approved changes. If DOE finds the change will affect regulatory milestones, DOE shall identify proposed modifications to the regulatory milestones pursuant to Part 12 (Changes to Regulatory Milestones) and notify the other Parties of modifications to the baseline as provided below. If DOE finds that the change to work does not impact regulatory milestones, DOE shall, after consultation with the other Parties, modify the baseline. Upon agreement or the resolution of a dispute that a change to work is necessary, then DOE shall amend the relevant Work Description Document(s) to reflect the change.

125. If DOE desires to make a major modification to work being done pursuant to an RSOP, DOE must go through the review and approval process for modifications to either a PAM or an IM/IRA, whichever is appropriate. To make a minor modification to work being done under an RSOP, DOE's Project Coordinator shall submit written notice to the LRA's Project Coordinator, along with appropriate justification, not less than seven days prior to when DOE desires to effect the modification. While there is no formal requirement that the LRA approve minor modifications, the LRA's Project Coordinator may issue a Stop Work Order within seven days of receipt of the notification of any such modification.

126. DOE must initiate a request to make a major modification to work being done pursuant to a PAM in writing, with adequate justification, to the LRA Project Coordinator not less than 14 days prior to when DOE desires to execute or begin to execute the planned changes. The LRA's Project Coordinator shall review the request and either approve it, or deny it with an explanation, within seven days after receipt of the request. To make a minor modification to work being done pursuant to a PAM, DOE shall submit written notice to the LRA, along with appropriate justification, not

less than seven days prior to when DOE desires to effect the modification. While there is no formal requirement that the LRA approve minor modifications to a PAM, the LRA may issue a Stop Work Order within seven days of receipt of the notification of any such modification.

127. To initiate a major modification to work being done pursuant to an IM/IRA, DOE shall submit a request in writing with appropriate justification not less than 30 days prior to when DOE desires to execute or begin to execute the proposed changes. The LRA shall review such request and approve it, or deny it with explanation, in writing within 21 days after its receipt. To initiate a minor modification to work being done pursuant to an IM/IRA, DOE shall submit a written request to the LRA with appropriate justification not less than 21 days prior to when DOE desires to execute or begin to execute the proposed changes. The LRA shall review such request and approve it or deny it with an explanation in writing within seven days after its receipt.

128. To make a major modification to work being done pursuant to a CAD/ROD, DOE shall submit a written request, accompanied by appropriate justification, to the LRA not less than 90 days prior to when DOE desires to execute or begin to execute the changes. Concurrent with this submittal, DOE shall provide public notice of an opportunity for a 30 day public comment period regarding the modification. The LRA shall review such request and the public comments and approve the modification, or deny it with a written explanation, within 30 days after the close of the public comment period.

129. If DOE desires to modify an RSOP, it shall proceed through the document review process in paragraphs 112 or 113 and 114-115.

130. If DOE's Project Coordinator identifies the need to make a field modification for work being done under any type of decision document, she or he shall give verbal notice to the LRA's Project Coordinator within one day after making the modification, followed by a written justification within no more than seven days. While there is no formal requirement that the LRA approve field modifications, the LRA may discuss its concerns with DOE. If the LRA Project Coordinator requires a field modification, DOE and the LRA shall discuss the requirement and come to resolution within 24 hours from request for the field modification. Unless a stop work order is issued by the LRA, if the Parties do not come to agreement within 24 hours, the operations may continue pending dispute resolution pursuant to Part 15, Subpart F. If the agencies fail to reach agreement, the LRA's Project Coordinator may issue a Stop Work Order against further action on the modified work within seven days of receipt of the notification of any such modification based on a finding that the modification is resulting or will result in work being done that is (a) inadequate or defective, (b) likely to have a substantial adverse impact on other response action selection or implementation processes, (c) not within the parameters of a field modification, but rather is a minor or major modification, or (d) likely to significantly affect cost, scope, or schedule and requires further evaluation.

131. DOE will be the primary Party responsible for initiating the change process and providing sufficient time and documentation to demonstrate to the LRA's reasonable satisfaction that the proposed modification(s) or revision(s) is (are) necessary to accomplish the activity. The LRA will be responsible for internal consultation and for collecting, consolidating, and reconciling comments within the allotted time frames. During the time allotted for the LRA to respond to a proposed

modification that requires approval, the DOE and LRA Project Coordinators should meet to resolve any potential barriers to approval. If agreement is reached, DOE will submit a revised proposed modification and will implement the same in accordance with this Agreement. If the LRA denies the modification, or approves it only with conditions unacceptable to DOE, DOE may invoke dispute resolution.

132. As described above, the Parties intend to allow an accelerated change process for minor modifications, particularly given that, while DOE must always give the LRA advance notification of a minor modification, depending on the type of work or decision document being modified, advance approval from the LRA may not be required. If the LRA disputes a minor modification, the LRA shall discuss its concerns with DOE, but if no accommodation is reached, the LRA may issue a Stop Work Order against further action on the modification based on a finding that the modification is resulting or will result in work being done that is (a) inadequate or defective, (b) likely to have a substantial adverse impact on other response action selection or implementation processes, or (c) not within the parameters of a minor modification, but instead constitutes a major modification.

PART 11 BUDGET AND WORK PLANNING

Subpart A. Budget Planning, Milestone Setting, and Identification of Target Activities

133. DOE shall use its best efforts and take all necessary steps to obtain timely funding to meet its obligations under this Agreement and shall include sufficient funds in its budget request to the President, as specified in Executive Order 12088, to support the activities to be conducted under the Agreement. DOE's compliance with the provisions of this Part shall constitute compliance with the above standard.

134. Without waiving or impairing DOE's authority over its budget and funding level submissions, DOE agrees to participate in the planning and budget formulation and execution processes as described in this Part, including the provisions for CDPHE and EPA participation. Nothing in this Agreement shall be interpreted to make the baseline itself an enforceable requirement of this Agreement, or to require CDPHE or EPA approval of the baseline. Without waiving or impairing any statutory authority, EPA and CDPHE agree to establish or revise regulatory milestones in accordance with this Part. In particular, nothing in this Part shall impair EPA's or CDPHE's discretion to determine that the scope and pace of regulated activities that can be accomplished within the RFETS EM allotment is insufficient to protect human health or the environment, or is otherwise inconsistent with the exercise of their statutory authorities.

135. It is the intent of the Parties that the EM actions governed by this Agreement shall reflect the Parties' commitment to proactively pursue and implement productivity gains and cost savings and shall consider, but not be strictly driven by the budget targets provided by OMB or DOE-HQ. Specifically, the cost of projects governed by this Agreement, along with the overall constraints of the federal budget process, timing of financial decisions, and allocation of funds, shall be considered by all Parties when establishing the scope and schedule of EM projects. To the extent that it is consistent with their statutory obligations, EPA and CDPHE intend to establish requirements for EM projects that can be accomplished within the EM funds appropriated to RFETS.

136. In accordance with the provisions of this Part, the Parties agree that DOE, in consultation with EPA and CDPHE, will maintain and revise the baselines of site activities; and EPA and CDPHE, in consultation with DOE, will set the regulatory milestones including completion dates for specific activities. The Parties, in consultation with the DNFSB, will identify the target activities. These target activities will be identified in Appendix 6 each fiscal year. The Parties further agree that the activities identified in Appendix 6 are targets that are not enforceable as requirements of this Agreement. Target activities will only be modified upon the consent of DNFSB and all Parties, through the consultation process provided in Subpart 11D. This division of responsibility is intended to give DOE significant flexibility in managing EM projects to meet regulatory milestones. Consequently, changes within the baseline shall not necessarily constitute good cause for changes to regulatory milestone dates for completion of specific activities.

137. DOE shall perform activities on the baseline set forth in Appendix 4 and according to the Work Description Document(s) developed thereunder.

138. The baseline shall be depicted in sufficient detail to identify target activities and any regulatory milestones. In addition, a listing describing each of the regulatory milestones and target activities depicted on the baseline shall be provided. The level of detail to be provided will be equivalent to the information provided in the Cost Account Documents.

139. The time frames and terms specified in this Part are those in use beginning in the fall of 1995. If DOE's budget schedule or process changes, these paragraphs may be modified accordingly.

140. The Parties shall review the previously established baseline, regulatory milestones, and target activities annually, and shall either re-establish or revise them. To the extent that target activities need to be modified, such modifications will be accomplished through the consultation process provided in Subpart 11D.

141. DOE shall, by August 1, 1996, develop an Integrated Site-Wide Baseline that depicts activities necessary to achieve the end of the Intermediate Site Condition. The Integrated Site-Wide Baseline, from which milestones and target activities are selected, will be based on current assumptions, which may change as additional technical information is acquired, and as the Parties gain experience in implementing the RFCA. The Integrated Site-Wide Baseline will be updated at least annually.

142. EPA and CDPHE shall establish no more than 12 milestones per fiscal year. Milestones shall be designed to:

a. provide accountability for key commitments;
b. ensure adequate progress at the Site;
c. provide adequate scope drivers; and
d. facilitate budget planning and execution.

143. Following the submittal of the Integrated Site-Wide Baseline described in paragraph 141, EPA and CDPHE may establish a few key outyear milestones (i.e., beyond FY+2) to provide long-term drivers for achieving the end of the Intermediate Site Condition. This means that in the annual budget and work planning process, the Parties shall evaluate the impact of changes to near-term (i.e.,

FY through FY+2) milestones on DOE's ability to meet the outyear milestones. However, the Parties recognize that good cause may exist for extending a near-term milestone, even though it may impact DOE's ability to meet an outyear milestone. Outyear milestones shall be established consistent with the framework provided in this Part. The Parties recognize that outyear milestones are inherently subject to greater uncertainty than near-term milestones. However, the Parties also recognize that the limitation on the number of annual milestones, and the fact that DOE controls the baseline, together provide DOE with substantial management flexibility in achieving both near-term and outyear milestones. Any extension to near-term milestones will not necessarily provide good cause to extend an outyear milestone. Outyear milestones shall not be extended unless DOE demonstrates that assumptions underlying the establishment of the outyear milestones have changed or cannot be met, such that achieving the outyear milestone is no longer feasible. Determinations regarding outyear milestones are subject to the provisions of paragraph 204.

144. The Parties agree that any discussion conducted pursuant to Part 12 of this Agreement related to extending regulatory milestones that follow the completion of a target activity identified in Appendix 6 will be informed by previous discussions and agreements reached by the DNFSB and the Parties under Subpart 11D.

145. The factors to be considered in establishing, reviewing and revising the baseline, regulatory milestones, and target activities include, but are not limited to the following:

a. the Vision;
b. the Preamble;
c. the logical progression toward cleanup;
d. the reduction of short-term and long-term human health and environmental risk;
e. existing requirements of this Agreement;
f. the life-cycle cost of individual projects;
g. logistic, engineering, technical, and health and safety concerns related to proposed projects;
h. any impacts on related projects, including the costs and scheduling of such projects;
i. detrimental impacts of significant fluctuations in resource requirements from year to year;
j. DOE's management capabilities;
k. new or emerging technologies;
l. CDPHE's and EPA's oversight capabilities;
m. changing priorities as a result of new information;
n. the Integrated Water Management Plan;
o. views expressed by local elected officials;
p. the views expressed by the public;
q. any consensus views expressed by the Rocky Flats Citizens Advisory Board;
r. the Congressional budget appropriation, OMB apportionment, and DOE Rocky Flats EM allotment for FY, as well as the Rocky Flats EM allotment of the President's Budget for FY+1 and associated outyear funding targets;
s. the completeness and accuracy of the scope, schedule, and costs for the tentative FY tasks;
t. the status of ongoing projects;
u. cost savings initiatives and productivity improvements;
v. DNFSB recommendations to DOE; and
w. the Environmental Restoration Ranking.

146. The review and re-establishment or revision of the baseline and regulatory milestones, and the identification of target activities for the upcoming FY and FY+1 shall occur as follows:

a. Between July and October of each year, the Parties shall:

(1) evaluate the current schedule, cost and funding status of all projects in progress in the just-ending fiscal year, particularly those activities or projects that are on the critical path to meeting regulatory milestones in the upcoming two fiscal years;

(2) share the results of this evaluation with local elected officials and the Rocky Flats Citizens Advisory Board (CAB);

(3) consult in developing, verifying and reviewing cost account documents and, as necessary, draft work packages for FY; and

(4) incorporate the most recent information available concerning project status and Congressional actions on the upcoming FY budget that may affect existing regulatory milestones, target activities, and baselines.

b. Within 45 days after Congressional appropriation of the FY budget, DOE shall brief EPA, CDPHE and the CAB on the budget appropriation and tentative funding allocations for the new fiscal year at the Cost Account Document (CAD) level. If there is a delay in Congressional appropriations beyond the first of the new federal fiscal year, Rocky Flats Field Office (RFFO) shall inform EPA, CDPHE, and the CAB of any continuing resolutions, and of the impact of the delay on RFETS's ability to meet target activities or regulatory milestones and other requirements of this Agreement. EPA, CDPHE, and the CAB will review these actions and may recommend reallocation of available funds.

c. Within 10 days of receipt of the DOE allotments to RFETS, but no later than 60 days after the OMB apportionment of DOE's FY appropriation, the Parties shall evaluate the schedule, cost, and funding status of all projects scheduled to be implemented during the FY and FY+1 in light of the factors set forth in paragraph 145 and in light of Subpart 11C. Any Party or the CAB may propose changes to the baselines, target activities or regulatory milestones for FY or FY+1. After the Parties have completed their evaluation of the baselines, target activities and regulatory milestones for FY and FY+1, EPA and CDPHE shall re-establish the regulatory milestones, or establish modified ones, as appropriate. DOE shall revise the baselines as necessary to ensure that the re-established or modified regulatory milestones are fully incorporated therein.

(1) If the RFETS EM allotment exceeds the projected cost for the scope of RFETS EM projects defined for FY, DOE shall recommend the implementation of additional scope or the acceleration of activities during the FY commensurate with the difference in projected costs. DOE may propose using part or all of the excess allotment for activities not covered by this Agreement.

(2) If the projected cost for the scope of RFETS EM projects defined for FY exceeds the RFETS EM allotment for the FY, the Parties shall attempt to agree on a revised scope or pace of RFETS EM activities that can be accomplished within the RFETS EM allotment. To the extent that the Parties are unable to agree on a revised scope or pace of EM activities and milestones regulated under this Agreement for FY, EPA and CDPHE shall unilaterally establish milestones for FY. DOE may dispute the establishment of such milestones pursuant to Part 15D. Following any final decision that establishes regulatory milestones for FY that DOE believes cannot be met due to lack of funding, DOE shall make a good faith effort to comply with such milestones. A good faith effort may, but does not necessarily, include one or more of the following actions: rescoping or rescheduling the baseline consistent with the regulatory milestones and target activities, developing and implementing new productivity improvements or cost-saving measures, requesting re-allotments or reprogramming of appropriated funds, and seeking supplemental appropriations. If DOE subsequently fails to meet a regulatory milestone, it retains the right to assert the defenses described in paragraph 249 in response to any enforcement action by EPA or CDPHE.

(3) The Parties will use their best efforts to complete the processes described in this paragraph by the end of the first quarter of each fiscal year. To the extent that the Parties cannot reach consensus regarding either the baselines or regulatory milestones for FY and FY+1, EPA and CDPHE shall unilaterally establish the milestones. Those portions of the baselines or regulatory milestones for which the Parties cannot reach consensus shall be subject to the appropriate dispute resolution provisions of Subpart 15D. Existing regulatory milestones will remain binding pending resolution of the dispute.

147. The review and revision of the baseline, establishment of regulatory milestones, and identification of target activities for FY+2 shall occur as follows:

a. Within one week after RFFO receipt of EM planning and/or budget guidance for FY+2, RFFO shall provide a copy of such guidance to CDPHE, EPA, and the CAB. Within one week after receipt by RFFO of target level funding guidance, it shall provide a copy of such guidance to CDPHE, EPA, and the CAB. Within three weeks after receipt by RFFO of target level funding guidance, it shall provide a preliminary assessment of its impacts to CDPHE, EPA, and the CAB. RFFO shall also provide a copy of its initial contractor budget guidance to CDPHE, EPA, and the CAB within two weeks after its issuance.

b. Following any final determination of the baselines, target activities and regulatory milestones for FY and FY+1 (described in the preceding paragraph), DOE, in consultation with EPA, CDPHE, and the CAB, shall propose the tentative activities and the relative priorities of those activities to be performed in FY+2 pursuant to this Agreement. The tentative activities and relative priorities identified shall reflect the newly revised baselines for FY and FY+1 and evaluation of the factors described in paragraph 145. CDPHE and EPA shall approve or modify the tentative activities and such approval or modification shall not be subject to dispute resolution until after the conclusion of the steps described in the following sub-paragraph.

c. Within 60 days of identification of the tentative FY+2 activities, the Parties shall establish the FY+2 baselines and regulatory milestones, and identify target activities for FY+2, considering the factors set forth in paragraph 145. DOE shall use its best efforts to identify early on any constraints that its budgetary targets would impose on FY+2 activities. To the extent that the Parties cannot reach consensus on the FY+2 baselines and regulatory milestones, EPA and CDPHE shall unilaterally establish regulatory milestones for FY+2, and may provide recommendations to DOE on the scope and schedule of baseline activities. The dispute resolution provisions of Subpart 15D may be applied to those portions of the baselines or regulatory milestones for which the Parties cannot reach consensus. The regulatory milestones established by EPA and CDPHE shall be binding pending resolution of the dispute. EPA and CDPHE shall identify to RFFO which of these recommendations shall be included in RFFO's proposed program for FY+2, in accordance with subparagraph (d), below. DOE will develop the proposed program at the level of detail and quality required to meet EM planning and/or budget guidance for FY+2. DOE shall have the opportunity to discuss with EPA and CDPHE the projected scope, cost and schedule to develop the proposed program activities recommended for inclusion in the budget pursuant to subparagraph (d), below, and whether the cost, scope and schedule can be reasonably developed in time to meet DOE's budget submittal schedules. EPA and CDPHE may choose to revise or withdraw recommendations based on these discussions. If the development of the proposed program delays timely completion of any regulatory milestone as then currently planned shall constitute good cause for a change pursuant to paragraph e.. Recognizing that the development of scope, cost and schedule for proposed program activities will require the expenditure of resources that might have to be allocated away from activities already in the baseline, these recommendations shall be judicious and made in good faith.

d. RFFO shall, in consultation with EPA and CDPHE, develop a proposed program (described in Cost Account Documents and other budget formulation documents) sufficient to support the agreed-upon FY+2 baseline, target activities, and regulatory milestones identified pursuant to the preceding sub-paragraph; if the Parties have been unable to agree upon a baseline and/or regulatory milestones, RFFO shall develop a proposed program sufficient to support the FY+2 baseline (including activities recommended for inclusion by EPA and CDPHE pursuant to subparagraph (c), above) and regulatory milestones identified by EPA and CDPHE. If necessary, RFFO will prepare additional funding scenarios consistent with the DOE-HQ funding guidance (the "target level funding case"). In some cases, the target level funding may be insufficient to fund all tasks in the agreed-upon baseline (or, if there is not agreement on the baseline, all activities identified for inclusion in the baseline by EPA and CDPHE pursuant to subparagraph (c), above). In such cases, RFFO shall, in consultation with EPA and CDPHE, describe the resulting schedule impacts, including projections of any regulatory milestones or target activities that may be missed and any regulatory requirements outside the scope of this Agreement that may be impacted. RFFO shall include this description with the submittal of its proposed budget to DOE-HQ. If EPA and CDPHE disagree with RFFO's analysis of the impacts of the target level funding case, they may individually or jointly prepare a description of those impacts. RFFO shall forward the Parties' descriptions to DOE-HQ with its own description of the impacts. If these issues are not subsequently resolved prior to DOE's

submission of its budget request to OMB, DOE-HQ shall forward all Parties' descriptions of the impacts to OMB with its budget submission.

e. At the conclusion of the process established by this paragraph and any related dispute resolution, the Parties will transmit to the CAB in writing the list of regulatory milestones established and target activities identified for FY+2, along with an explanation of how the Parties addressed any CAB recommendations regarding those milestones and target activities.

148. When milestones are established or re-established, DOE shall update Attachment 8 to include the newly established or-reestablished milestones. When target activities are identified or re-identified, DOE shall update Appendix 6.

149. DOE shall keep EPA, CDPHE, local elected officials, and the CAB adequately informed of budgetary matters that may affect implementation of the RFCA as specified below:

a. Within ten business days of submission of the President's budget to Congress, DOE shall submit to EPA, CDPHE, and the CAB a summary of the budget request forwarded to DOE-HQ by RFFO, and submit to EPA, CDPHE, and the CAB a summary of the Site-EM budget request forwarded by DOE-HQ to OMB associated with the President's budget.

b. Within 60 days after the President's submission of the FY+1 budget to Congress, RFFO shall brief EPA, CDPHE, and the CAB on those aspects of the President's budget request relating to RFETS at the Cost Account Document level of detail, or at a lower level of detail if available. At this briefing, RFFO shall provide EPA, CDPHE, and the CAB with a written description of any differences between the funding levels identified in the Cost Account Documents that were prepared pursuant to the paragraph d. in the preceding fiscal year to support what was then the FY+2 baseline, target activities and regulatory milestones, and is now the FY+1 baseline, target activities and regulatory milestones, and the actual funding levels included in the President's budget request to Congress, along with an assessment of the impact such differences may have on DOE's ability to meet target activities, regulatory milestones or other requirements established under this Agreement, or other environmental requirements not regulated under this Agreement.

c. DOE shall notify and discuss with EPA, CDPHE, and the CAB, prior to transmittal to OMB, any budget amendment, supplemental appropriation request, reprogramming request, and any analyses of any corresponding impacts upon the workscope and schedules and DOE's ability to meet target activities or regulatory milestones and other requirements of this Agreement, and other environmental requirements not regulated under this Agreement, with and without the amendment, supplemental appropriation or reprogramming request.

Subpart B. Budget Execution

150. The activities described in this Subpart are directed at execution of the budget for the current FY.

151. DOE, CDPHE and EPA Project Coordinators shall meet periodically throughout the FY to monitor and discuss the status of projects scheduled during the year and cost savings initiatives and productivity improvements associated with those projects.

152. RFFO shall provide EPA and CDPHE with copies of the Site Program Execution Guidance at the same time it provides such guidance to its contractors.

153. RFFO shall consult with EPA and CDPHE in reviewing the work package summary documents prepared by its contractor.

154. Throughout the FY, DOE shall promptly notify EPA, CDPHE, local elected officials, and the CAB of any proposed site-specific or major programmatic action, if such action is likely to have an impact on DOE's ability to meet the baselines, target activities or regulatory milestones in this Agreement. DOE shall consider any comments CDPHE, EPA, local elected officials, or the CAB may provide in implementing the proposed action.

155. Within 30 days following the completion of DOE's annual midyear management review (approximately April-May of each year), RFFO shall brief EPA, CDPHE, and the CAB on any decisions that affect regulatory milestones or target activities under this Agreement.

156. DOE shall provide EPA, CDPHE, and the CAB with a copy of the reports specified in section 3153 of the Defense Authorization Act for fiscal year 1994 within ten business days of their submission to Congress.

157. Neither the process described in this Part, nor CDPHE's participation in it, constitutes a waiver by the State of its position that the Executive Branch is obligated to seek full funding for all activities required by this Agreement, and that DOE's obligation to comply with the requirements of this Agreement is not contingent on funding. In addition, acceptance of the process described in this Part, does not constitute a waiver by DOE that its obligations under this Agreement are subject to the availability of appropriated funds and the provisions of the Anti-Deficiency Act, 31 U.S.C. Sec. 1341.

Subpart C. Cost Savings Initiatives and Productivity Improvements

158. The Parties agree to consult during the RFETS budget planning and execution processes to identify and evaluate opportunities and incentives to improve productivity and reduce the costs associated with environmental management activities at the Site and, whenever reasonable, implement such measures. While the Parties recognize the high value of identifying and implementing cost savings measures and productivity improvements, the identification and implementation of such measures and improvements are not requirements of this Agreement. However, nothing in this Part shall preclude EPA or CDPHE from requiring actions within their statutory authority that may incidentally result in cost savings or productivity improvements.

159. The Parties recognize that efficiently, cost-effectively managing and conducting activities at RFETS is a key element to successfully achieving the Preamble objectives. To this end, standards, requirements and practices shall be regularly reviewed to determine that activities at RFETS are

conducted in a manner that is both necessary and sufficient to achieve compliance with requirements; to protect workers, the public, and the environment; and to accomplish the Preamble objectives expeditiously and efficiently. To maximize the efficient use of all organizations' resources, the Parties shall conduct and participate in such reviews internally and in cooperation with the others regarding matters of shared interests. Each shall provide to the others information about the nature, status, and implementation of its internal "necessary and sufficient" reviews. If cost savings are gained as a result of these reviews, that information shall also be provided to DOE for use in determining overall cost savings under this Part.

160. RFETS will have an approved Annual Cost Baseline prior to the implementation of the following paragraphs concerning application of cost savings. By August 15 of each year, DOE, in consultation with the regulators, shall review the proposed Annual Cost Baseline submitted by its contractor, shall make any appropriate changes, and shall approve the Annual Cost Baseline within thirty days of receiving RFETS' fiscal year allocation.

161. A percentage of cost savings presumptively will be retained at RFETS for use in performing additional EM activities. The presumption of on-site retention of cost savings may be overcome if DOE headquarters determines that there is an imminent danger or significant threats to human health or the environment at another DOE site, and the application of the RFETS cost savings is necessary to abate such danger or threat. DOE headquarters agrees to consult with EPA and CDPHE prior to applying the presumptive share to another DOE facility. Determinations with respect to overcoming the presumption that cost and productivity savings will stay at RFETS lie within DOE's sole discretion, and shall not be subject to the dispute resolution provisions of this Agreement.

162. The percentage of cost savings to be retained at RFETS is 60% in the first year following the adoption of an approved cost baseline (FY 1997), 75% in the second year, and 90% in the third year and every year thereafter. To the extent that any cost savings are attributed to RFETS contractors, the percentages cited in this paragraph apply to the cost savings remaining after any contractual obligations have been paid to such contractors.

Subpart D. Consultation and Accountability for Target Activities

163. To the extent that target activities identified in Appendix 6 need to be modified or are not met, DOE, in consultation with and after review by EPA and CDPHE, will develop an appropriate means of communication to inform the public of the need to modify a target or that a target has been missed, the work planned to address or correct the problem, and the effect that the modified target or missed target is expected to have on DOE's ability to meet any regulatory milestone. This public information will be widely disseminated to the general public, including the Citizens Advisory Board and other groups having an interest in RFETS."

164. In the event DOE determines that a target identified in Appendix 6 needs to be modified (e.g., completion date change) or if a target is not met, DOE will submit a plan to the DNFSB, EPA, and CDPHE to address the issue. For a proposed modification to a target, DOE will notify the DNFSB, EPA and CDPHE, and submit a plan within 30 days of such notification. For a missed target, DOE

will also submit a plan within 30 days of missing the target. In developing any such plan, DOE will include:

a. Information on the status of the activity covered by the target;
b. An assessment of whether a delay in meeting the target will affect DOE's ability to meet any regulatory milestone; and
c. A description of any steps that are planned to accelerate or modify precursor activities addressed by the target in order to accomplish a regulatory milestone on the schedule specified in this Agreement.

Additional time for DOE's submittal of the plan to the DNFSB, EPA, and CDPHE may be provided upon agreement of the DNFSB and the Parties. The DNFSB, EPA, and CDPHE will provide within 30 days of receipt of DOE's plan any comments on the plan to DOE, and DOE will address the comments in a revised plan. Additional time for submittal of comments to DOE may be established upon agreement of the DNFSB and the Parties. To the extent that comments on the plan are inconsistent, if DOE does not agree with the comments, or if DOE, the DNFSB, EPA, and CDPHE do not agree on the adequacy of the plan, then DOE will hold a meeting with the DNFSB, EPA, and CDPHE to reach agreement on the necessary revisions to the plan. The Parties agree that the DNFSB will participate in these discussions and moderate the resolution of any safety issues at nuclear facilities. Upon completion of the plan, DOE will regularly advise the DNFSB, EPA, and CDPHE of the status of its implementation and the status of the progress made to meet any affected regulatory milestone.

PART 12 CHANGES TO REGULATORY MILESTONES

165. A regulatory milestone that is established according to the provisions of this Agreement shall be changed upon receipt of a timely request for change, provided good cause, as defined in this Part, exists for the requested change. Any request for change by any Party shall be submitted in writing and shall specify:

a. the regulatory milestone that is sought to be changed;
b. the length of the change sought;
c. the good cause(s) for the change; and
d. any related regulatory milestone that would be affected if the change were granted.

166. Good cause for a change includes the following:

a. An event of force majeure;
b. A delay caused by EPA or CDPHE's failure to meet any requirement of this Agreement;
c. A delay caused by the initiation of judicial action;
d. A delay caused, or which is likely to be caused, by the grant of a change in regard to another regulatory milestone;
e. A delay caused by a change to a planning assumption, as specified in the baseline, that results from either a request by CDPHE or the EPA, or is identified by DOE, but does not represent a failure of DOE or its contractors to properly manage the work;
f. A delay caused by a stop-work order issued by EPA or CDPHE;

g. a delay caused by the requirement to perform additional work under CERCLA §§ 104(a)(1)(A), 104(a)(1)(B), or 106(a); and

h. Anything else mutually agreed to by the Parties as constituting good cause.

167. Requests for a change for one or more regulatory milestones shall be submitted no less than 30 days prior to the date of the first regulatory milestone for which the change is sought, except for changes sought on the basis of a force majeure.

168. A determination regarding the existence of good cause may only be disputed in the context of changing a regulatory milestone.

169. Within 14 days of receipt of a request by DOE for a change of a regulatory milestone, the LRA, after consultation with the SRA, shall grant, grant in part, or deny the request. The SRA may dispute the LRA's decision, pursuant to the expedited dispute resolution provisions of Subpart 15E. DOE may dispute a denial or partial grant of a change request in accordance with Subpart 15B.

170. A timely request for a change, as defined in paragraph 167, shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected regulatory milestone until a decision is reached on whether the requested change will be approved. If dispute resolution is invoked and the requested change is denied, stipulated penalties may be assessed and may accrue from the date of the original regulatory milestone. Following the grant of a change, the regulatory milestone can only be enforced as most recently changed.

PART 13 FORCE MAJEURE

171. A force majeure means any unforeseen or unexpected event arising from factors beyond the control of a Party that could not be avoided or overcome by due diligence and that causes a delay in, or prevents the performance of, any obligation under this Agreement. Force majeure may arise by reason of events including, but not limited to:

a. acts of God, fire, war, insurrection, civil disturbance, or explosion;

b. unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;

c. adverse weather conditions that could not reasonably be anticipated;

d. restraint by court order or order of public authority;

e. inability to obtain, consistent with statutory requirements and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the DOE;

f. delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and

g any strike or other labor dispute not within the control of the Parties affected thereby.

172. Force majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

173. DOE shall bear the burden of establishing that a delay was caused by an unforeseen or unexpected event or occurrence, that the event was beyond DOE's control, that the event could not have been avoided or overcome by due diligence, and that the event delayed or prevented performance by a date or in the manner required by this Agreement.

174. To assert a claim of force majeure, DOE shall provide verbal notification to the LRA, or, in cases that affect Site-Wide issues, both CDPHE and EPA, within two business days after DOE becomes aware, or should have become aware, of the effect of the event on DOE's ability to perform the obligations of the Agreement creating the claim of force majeure, followed by written confirmation within an additional business day. Failure to assert a claim of force majeure within this time frame shall constitute a waiver of DOE's right to dispute any denial of an extension request or assessment of stipulated penalties on the basis of the event giving rise to the force majeure.

175. The LRA, or, for Site-Wide issues, both EPA and CDPHE shall accept, accept in part, or reject DOE's claim of force majeure within 14 days of receipt of the written notice of claim. DOE may only dispute the LRA's decision on a claim of force majeure in the context of the LRA's decision on a change to a regulatory milestone. Nothing in the preceding sentence shall prevent DOE from raising force majeure as a defense to any action by the State or EPA to enforce a requirement of this Agreement.

PART 14 STOP WORK ORDERS

176. DOE, the LRA, or, in the case of a Site-Wide issue, the SRA, may issue a stop work order for work covered by this Agreement, whether or not the particular work at issue is already the subject of dispute resolution. The stop work order may be issued in accordance with Part 10 or Subpart 15F, or if the Party believes a particular task or portion of work (1) is inadequate or defective, or (2) is likely to have a substantial adverse effect on other response action selection or implementation processes. The provisions of this Part shall not be invoked for any disagreement on the selection of remedial/corrective action. Issuance of a stop work order shall be made in writing by the DRC member of the requesting Party, sent to the Dispute Resolution Committee (see Part 15) members of other Parties, as appropriate, and shall explain why the stop work order is required.

177. Work affected by the stop work order will be discontinued immediately for up to five business days pending determination by the DRC pursuant to Subpart 15B or 15E, as appropriate (LRA or Site-Wide). The DRC shall confer and meet as necessary during this period. If the DRC does not concur in the need for work to stop, work shall remain stopped pending immediate elevation to the SEC. Once the issue is referred to the SEC, the procedures of Subpart 15B shall apply, except that the LRA member of the SEC shall render its decision within five business days after receipt of notice from the DRC. To the extent practicable, prior notification shall be given to the other Parties that a stop work order is forthcoming

178. If the Parties agree that the stop work order is necessary, the stop work order shall constitute a timely request for change to a regulatory milestone, pursuant to Part 12 (Changes to Regulatory Milestones). DOE's time periods for performance of the work subject to the stop work order, as well as the time period for any other work dependent upon the work which was stopped, shall be extended pursuant to Part 12 of this Agreement for such period of time equivalent to the time in which work was stopped, or as agreed by the Parties.

179. Resumption of work following issuance of a stop work order will be authorized by the submittal of a written decision of the DRC or the SEC. The written decision can be of two types: 1) the DRC or SEC decision states that the stop work order is rescinded and that work can resume immediately; or 2) the DRC or SEC decision upholds the stop work order and states the conditions that must exist before the work can be resumed. In this instance the decision will identify the LRA that will make the determination that the conditions for work resumption have been satisfied only if the designation of LRA should change as a result of the work resumption decision. When the designated LRA determines that the conditions to resume work have been satisfied it will advise DOE, in writing, that the stop work order has been lifted and that DOE is authorized to proceed with the work.

180. Upon receipt of the written decision to resume work or when the LRA has determined that the conditions to resume work have been satisfied, DOE shall determine the magnitude of baseline and regulatory milestone changes resulting from the stop work order. DOE shall then request these changes to the regulatory milestones pursuant to Part 12.

PART 15 RESOLUTION OF DISPUTES

Subpart A. General Provisions Regarding Dispute Resolution

181. If a dispute subject to dispute resolution under this Agreement arises, the appropriate procedures of this Part shall apply. The Parties recognize the value of speedily resolving ripe disputes. Thus, each Party's responsible staff level personnel are encouraged to raise disputed matters quickly for resolution in accordance with this Part. Nevertheless, the Parties shall use their best efforts to informally resolve issues. The Parties agree to invoke dispute resolution only for significant issues; to utilize the dispute resolution process only in good faith; to use their best efforts to comply with the timeframes for dispute resolution established in this Part; and to expedite, to the extent possible, the dispute resolution process whenever it is used.

182. The time frames specified in this Part shall begin to run on the last date that a party to the dispute receives the notice of dispute in accordance with Part 22.

183. Subject to Part 18 (Reservation Of Rights) the Parties shall be bound by and abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part.

184. The pendency of any dispute under this Part shall not affect DOE's responsibility for timely performance of the work required by this Agreement, except for (1) cases where the final LRA decision-maker concurs that, under the particular circumstances (e.g., an event of force majeure) associated with the dispute, an extension is appropriate; or (2) when DOE has delivered a change

request to CDPHE and EPA 120 days or more in advance of a regulatory milestone, and CDPHE or EPA action on the change request has been disputed. In the latter case, the time period for completion of the work shall be extended for a period of time usually not to exceed any time taken beyond 120 days to resolve any good faith dispute.

185. CDPHE or EPA may bring an administrative or judicial enforcement action for any violation of the requirements of this Agreement without first initiating dispute resolution. Except as provided in paragraph c., if a matter is already subject to dispute resolution, CDPHE and EPA agree to participate in good faith in the dispute resolution process prior to bringing any such enforcement action. DOE may not bring an administrative or judicial action challenging any action by CDPHE or EPA that is subject to dispute without first exhausting the appropriate dispute resolution process provided in this Part.

186. Within 21 days of the final resolution of any dispute under this Part, DOE shall incorporate the resolution and final determination into the appropriate plan, schedule, or procedure(s), and proceed to implement the activity according to the amended plan, schedule, or procedure(s). DOE shall notify the other Parties as to the action(s) taken to comply with the final resolution of a dispute. This time period may be extended as agreed by the Parties.

187. The Dispute Resolution Committee (DRC) is the first level of formal dispute resolution among all three Parties. CDPHE's designated member of the DRC is the Hazardous Materials and Waste Management Division Director. DOE's designated member of the DRC is the Assistant Manager for Environmental Compliance, Rocky Flats Field Office. The EPA member of the DRC is the Region VIII Assistant Regional Administrator for Ecosystems Protection and Remediation. The Senior Executive Committee (SEC) is the second level of dispute resolution among all three Parties. The SEC will serve as the forum for resolving appeals from the DRC. CDPHE's representative on the SEC shall be the Director, Office of Environment. The EPA's representative on the SEC is the Region VIII Administrator. The DOE's representative on the SEC is the Manager, Rocky Flats Field Office. Written notice of any delegation of authority from a Party's designated DRC or SEC member shall be provided to the other Parties, pursuant to the procedures of Part 27 (Notification). It is the Parties' intention that the SEC members implement their responsibilities personally, to the extent practicable. The State-EPA Dispute Resolution Committee (SEDRC) and the State-EPA Senior Executive Committee (SESEC) shall have the same composition as the DRC and SEC, respectively, but the DOE member of the SEDRC and the SESEC shall not have a vote for purposes of determining consensus in the decisions of those bodies.

Subpart B. DOE Disputes Regarding Decisions by the Lead Regulatory Agency and Other Specified Disputes

188. DOE may invoke the dispute resolution provisions of this Subpart for the following decisions of the LRA:

a. disapproval of a proposed final document;
b. denial or partial grant of a change requested for a regulatory milestone;
c. those matters specified in paragraph 228 (Stipulated Penalties);
d. stop work orders;

e. denial of a proposed modification to work;
f. disputes over decisions on the Integrated Monitoring Plan; or
g disputes over the imposition of fees by CDPHE.

189. Upon agreement of all Parties, the dispute resolution provisions of this Subpart may be invoked to resolve disputes over the interpretation or implementation of this Agreement. In cases where the dispute concerns a Site-Wide matter, or where the Parties cannot agree whether EPA or CDPHE should be the LRA, the outcome of each level of dispute shall either be a consensus resolution or a joint statement of the differing positions.

190. The provisions of this Subpart may be invoked by any Party to resolve a dispute over a proposed amendment to this Agreement. In such a case, the outcome of each level of dispute shall either be a consensus resolution or a joint statement of the differing positions.

191. DOE may also invoke the dispute resolution provisions of this Subpart as specifically provided in this Agreement.

192. To invoke a dispute under this Subpart, the DOE Project Coordinator shall submit to the members of the DRC within 14 days of the disputed action a Written Notice of Dispute, setting forth in a clear and precise manner the particular issues in dispute, the nature of the dispute, the DOE's position with respect to the dispute, and the information relied upon to support its position. The DOE Project Coordinator shall develop the Written Notice of Dispute in consultation with the other Project Coordinators and shall include in the Written Notice of Dispute any positions and supporting information provided by the other Project Coordinators within the 14 day period. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached by the Project Coordinators, unless the DRC, by unanimous consent, agrees to elevate the dispute immediately to the SEC for resolution.

193. For disputes raised by DOE, the DRC or SEC member representing the Support Regulatory Agency for the disputed issue may, with the consent of either DOE or the LRA, participate in dispute resolution on that disputed issue. The SRA's involvement (or lack thereof) in the dispute resolution process shall not constitute cause to delay the dispute resolution process.

194. If the DRC has not elevated the dispute to the SEC by unanimous consent, the DRC shall have 21 days from receipt of the Written Notice of Dispute to resolve the dispute unanimously and issue a written decision. If the DRC, after accepting the dispute for its review, is unable to resolve the dispute within this 21-day period, the LRA DRC member shall issue a written decision. This decision may be appealed to the SEC level by DOE upon notice to the other Parties within seven days of the decision by the LRA's DRC member. Upon such appeal, the written decision of the LRA's DRC member, the Written Notice of Dispute, and any supporting information shall be forwarded to the SEC for resolution. If the LRA DRC member determines that the dispute is frivolous, he or she shall include such determination in the written decision, together with an explanation of the reasons supporting the determination.

195. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within

21 days, the LRA SEC member shall issue a written final decision, except as provided by either of the following two paragraphs.

196. Where EPA is the LRA, if, during the 21 day period for SEC resolution, the members of the SEC unanimously determine that the nature of the dispute is nationally significant, they may request that the dispute be elevated to the Administrator of EPA. Alternatively, if within 14 days of the Regional Administrator's decision, the Secretary of Energy makes a written determination that the dispute is nationally significant, or the Governor makes a written determination that the dispute is a matter of significant state policy, either the Secretary or the Governor may elevate the dispute to the EPA Administrator in accordance with all applicable laws and procedures. Upon request and prior to resolving the dispute, the Administrator of EPA shall meet and confer with the Secretary of Energy and the Governor or his designee to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide DOE, the Governor, and CDPHE with a written decision within 21 days of the elevation of the dispute setting forth the final resolution of the dispute.

197. Except as provided in the following paragraph, where CDPHE is the LRA, if DOE wishes to challenge the decision of the Director of the Office of Environment, it must appeal the Director's decision in accordance with applicable law. For purposes of appeal, the Director's decision shall become final 14 days after issuance, unless, within that time period, the Secretary or Governor elevates the matter pursuant to the following paragraph.

198. Where CDPHE is the LRA, if, during the 21-day period for SEC resolution, the members of the SEC unanimously determine that the dispute involves significant policy issues, they may request that the dispute be elevated to the Governor or his designee for resolution. Alternatively, if within 14 days of the decision of the Director of the Office of Environment, the Secretary of Energy or her designee makes a written determination that the dispute is nationally significant, or the Governor makes a written determination that the dispute is a matter of significant state policy, either the Secretary or her designee or the Governor or his designee may elevate the dispute to the Governor or his designee. Upon request and prior to resolving the dispute, the Governor or his designee shall meet and confer with the Secretary of DOE and the Regional Administrator to discuss the issue(s) under dispute. Upon resolution, the Governor or his designee shall provide DOE and EPA with a written decision within 21 days of the elevation of the dispute setting forth final resolution of the dispute. This decision may be appealed in accordance with applicable law. The time for bringing any such appeal shall run from the date of the Governor's (or his designee's) decision.

199. DOE disputes of Site-Wide matters shall follow the provisions of this Subpart, except that both EPA and CDPHE shall be deemed to be the LRA. If CDPHE and EPA members of the SEC are unable to reach agreement, the provisions of paragraphs 211-212 shall apply in lieu of the provisions of paragraphs 195-197.

Subpart C. Disputes Regarding Additional Work Required under CERCLA

200. DOE may invoke the dispute resolution provision of this Subpart where activities or circumstances at the Site give rise to a regulator determination that additional work is required because the jurisdictional elements described either in CERCLA §§ 104(a)(1)(A), (a)(1)(B), or 106(a) exist. DOE or CDPHE may invoke the provisions of this Subpart regarding EPA determinations made under paragraph 254.

201. Disputes under this Subpart may be invoked only after the regulator notifies DOE of the additional requirements that it deems necessary. DOE will not dispute regulator information requests.

202. Disputes under this Subpart will be limited to the following issues:

a. whether the jurisdictional elements described either in CERCLA §§ 104(a)(1)(A), (a)(1)(B), or 106(a) exist;

b. whether the activity or circumstance giving rise to the jurisdictional elements described either in CERCLA §§ 104(a)(1)(A), (a)(1)(B), or 106(a) is adequately regulated by other federal or state laws; or

c. whether the additional work required by the regulator or proposed by DOE will mitigate or abate the circumstances giving rise to the jurisdictional elements described either in CERCLA §§ 104(a)(1)(A), (a)(1)(B), or 106(a).

203. Disputes under this Subpart shall follow the procedures set forth in Subpart B (Disputes Regarding Decisions by the Lead Regulatory Agency), except as provided in paragraph 69 (CDPHE carrying out CERCLA authority).

Subpart D. Disputes Regarding Budget and Work Planning

204. After EPA and CDPHE re-establish the regulatory milestones for FY and FY+1, or establish regulatory milestones for FY+2 or beyond, if DOE disagrees with any part of their position, any Party may, upon determining that consensus is not likely to be reached, initiate dispute resolution by providing notice to the other Parties. Disputes regarding regulatory milestones for FY and FY+1 shall be raised during the consultative process described in paragraph c.. Disputes regarding regulatory milestones for FY+2 or beyond shall be raised during the consultative process described in paragraph b.. Within seven days of such notice, the Project Coordinators in consultation with the DRC shall prepare a Written Notice of Dispute regarding those portions of regulatory milestones for FY, FY+1, or FY+2 or beyond, as appropriate, for which the Parties were not able to reach a consensus. Upon completion of the Written Notice of Dispute, the DRC shall forward it along with any supporting information to the SEC. The SEC shall have 14 days to attempt to resolve the dispute. If it is unable to resolve the dispute in this time, EPA and CDPHE shall issue a written decision establishing the regulatory milestones for FY, FY+1, or FY+2 or beyond, as appropriate. DOE may, consistent with paragraphs 196 and 197, elevate any disputed aspects of this decision to the Administrator or the Governor or their designees for their resolution.

205. If EPA and CDPHE determine that they are unlikely to reach agreement regarding some or all revisions to the regulatory milestones for FY and FY+1, or establishment of regulatory milestones

for FY+2 or beyond, either one may initiate State-EPA dispute resolution by providing notice to the other Parties, local elected officials, and to the Rocky Flats Citizens Advisory Board (CAB) Site-Wide Issues Committee. Disputes regarding regulatory milestones for FY and FY+1 shall be raised during the consultative process described in paragraph c.. Disputes regarding regulatory milestones for FY+2 or beyond shall be raised during the consultative process described in paragraph b.. Within seven days of such notice, CDPHE and EPA Project Coordinators, in consultation with the State-EPA Dispute Resolution Committee (SEDRC), shall prepare a Written Notice of Dispute regarding those portions of the regulatory milestones for FY and FY+1, or FY+2 or beyond, as appropriate, on which the two Parties were not able to reach agreement. Upon completion of the Written Notice of Dispute, the SEDRC shall forward it, along with any supporting information, to the SESEC and to the CAB Site-Wide Issues Committee. The SESEC shall attempt to resolve the dispute within 14 days of receipt of the notice. If the SESEC is unable to resolve the dispute within this time period, the CDPHE and EPA members of the SESEC shall each prepare a proposed resolution of the dispute describing proposed regulatory milestones for FY and FY+1, or FY+2 or beyond, as appropriate. The SESEC shall submit the proposed resolutions of the dispute to the CAB Site-Wide Issues Committee no later than five days after the end of the 14 day period.

206. After receipt of these proposed resolutions, the CAB Site-Wide Issues Committee may make a recommendation to the CAB. The CAB may act upon this recommendation at its next meeting. Any recommendation approved by the CAB shall not be considered binding on CDPHE or EPA. CDPHE and EPA shall have five days from receipt of the CAB recommendation to reach agreement on regulatory milestones for FY, FY+1, or FY+2 or beyond. If they are unable to reach agreement, the existing regulatory milestones for FY and FY+1 shall continue in effect, and the existing FY+2 baseline shall be used to develop the FY+2 budget. Upon resolution of any dispute pursuant to this paragraph, the SESEC shall explain to the CAB in writing how the dispute was resolved, and how this result related to the CAB's recommendation.

Subpart E. Disputes Regarding Site-Wide Issues

207. Resolution of disputes between CDPHE and EPA under this Agreement regarding Site-Wide issues shall be resolved as described in this Subpart. Site-Wide issues shall be defined as:

a. Draft permit modifications for CADs/CERCLA Proposed plans
b. CADs/RODs
c. Updates to the Environmental Restoration Ranking
d. Updates to the IGD
e. Future RSOPs for Activities Regulated under this Agreement that are related to more than one OU
f. Treatment Systems that will treat wastes from both the Industrial Area and the Buffer Zone
g. Treatability Study reports for activities that are related to more than one OU
h. Integrated Water Management Plan
i. Integrated Monitoring Plan
j. Updates to the Community Relations Plan
k. Updates to the HRR
l. Change of a regulatory milestone
m. Stop work orders related to Site-Wide issues

n. Response actions that conflict with a regulator's statute
o. Changes of regulatory milestones due to permit problems
p. Site-Wide documents

EPA may also dispute CDPHE's decision regarding any retrievable, monitored waste storage or disposal facility described in paragraph 80, within 15 days of the issuance of any such decision.

208. If the Project Coordinator for any Party determines that the regulators are not likely to reach consensus on a Site-Wide issue, he or she, in consultation with his or her agency's SEDRC representative, shall submit to the SEDRC a Written Statement of Dispute setting forth the nature of the dispute, the disputing party's position with respect to the dispute, and the information relied upon to support its position. Receipt of the Written Statement of Dispute, along with any supporting documents, by the SEDRC shall constitute formal elevation of the dispute in question to the SEDRC. At such time as the disputing party submits a statement of dispute to the SEDRC, a copy shall be sent to DOE.

209. Following elevation of a dispute to the SEDRC, the SEDRC shall have 21 days to reach a consensus resolution. CDPHE and EPA SEDRC representatives shall jointly sign a written statement of any consensus resolution and provide a copy to DOE. If the SEDRC is unable to reach a consensus resolution, CDPHE and EPA members shall forward pertinent information and their respective recommendations to the SESEC for resolution.

210. The SESEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute. The SESEC shall have 21 days to reach a consensus resolution. CDPHE and EPA SESEC representatives shall jointly sign a written statement of any consensus resolution and provide a copy to DOE.

211. If the SESEC does not reach a consensus resolution within 21 days, EPA or CDPHE may issue a written notice elevating the dispute to the Administrator of EPA and the Governor or his designee for resolution. The Administrator, the Governor, and the Secretary of Energy or their respective designees, shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision.

212. If any State-EPA dispute is not resolved pursuant to this Part, such disputes shall be subject to Part 18 (Reservation of Rights).

Subpart F. Disputes Regarding Overall Direction of Proposed Work

213. This Subpart provides a mechanism to prevent expenditure of resources on proposed work that appears likely would ultimately be disapproved by the appropriate regulator.

214. If, during the scoping phase of any proposed work, (e.g., prior to preparation of a draft decision document) or, based on a field modification required by the LRA, the Project Coordinators cannot concur with the overall direction of the proposed work, either Project Coordinator may invoke dispute resolution, and may issue a stop work order. Following the issuance of a stop work order

under this Part, DOE performance of activities related to the proposed work that is the subject of the dispute may subject it to enforcement action by the LRA.

215. In attempting to resolve the dispute, the DRC or SEC should consider a number of options, including the possibility of conducting limited work that could inform a subsequent decision on whether to proceed or terminate the disputed work.

216. Disputes invoked under this Subpart shall follow the procedures described in paragraphs 192-195, except as follows:

a. the Written Notice of Dispute shall be prepared by the LRA Project Coordinator in consultation with the other Project Coordinators; and

b. there shall be no appeal of a decision by the LRA's SEC representative, although the disputed matter may be raised in a dispute of a subsequent decision.

PART 16 ENFORCEABILITY

217. Notwithstanding the terms of this Part, any failure by DOE to meet any regulatory milestone contained in this Agreement may give rise to the assessment of stipulated penalties by EPA or CDPHE, in accordance with Part 17 (Stipulated Penalties). The provisions of this Part shall apply consistent with the provisions of Part 17 (Stipulated Penalties).

218. The Parties agree that all Parties shall have the right to enforce the requirements of this Agreement.

219. All requirements of this Agreement shall be enforceable by any person, including the State, pursuant to sections 310(c) and 113(h)(4) of CERCLA, and any violation of such requirements of this Agreement will be subject to civil penalties under sections 109 and 310(c) of CERCLA. DOE agrees that the State and any of its agencies are "persons" within the meaning of section 310 of CERCLA.

220. Requirements of this Agreement that are requirements of RCRA and CHWA shall be enforceable by any person, including the State, pursuant to any rights existing under section 7002(a)(1)(A) of RCRA. DOE agrees that the State and any of its agencies are "persons" within the meaning of section 7002(a) of RCRA. Nothing in this paragraph shall be construed as contravening CERCLA § 113(h).

221. Requirements of this Agreement that relate to RCRA or CHWA may be enforced by CDPHE as requirements of a Compliance Order on Consent issued pursuant to § 25-15-308, C.R.S.

222. Requirements of State environmental permits issued for activities regulated under this Agreement may be enforced through the State's normal enforcement mechanisms.

223. In the event CDPHE determines that DOE's failure to meet any regulatory milestones under this Agreement was due to a lack of funding, it is CDPHE's intention not to seek or assess any penalties (stipulated or otherwise) for such violations, provided that:, (Budget and Work Planning):

a. DOE used its best efforts to obtain funding necessary to achieve the affected milestone(s) as provided in Part 11;

b. the President's budget requested sufficient funding to accomplish the proposed program identified in paragraph d.;

c. DOE-HQ allotted the insufficient funding for the affected EM program(s) consistently with the approach described in the Final Report of the Federal Facility Environmental Restoration Dialogue Committee, or another approach deemed acceptable by CDPHE; and

d. DOE made a good faith effort to comply with the milestones, as provided in Part 11, notwithstanding the lack of sufficient funding.

Nothing in this paragraph shall preclude CDPHE from taking other enforcement action seeking or imposing relief of an injunctive nature.

PART 17 STIPULATED PENALTIES

224. In the event that DOE fails to meet any regulatory milestone in accordance with the requirements of this Agreement, EPA and/or CDPHE may assess a stipulated penalty against DOE, pursuant to the provisions of this Part. If EPA and CDPHE both assess a stipulated penalty for the same violation, the combined assessments shall not exceed the amounts specified in the following paragraph. Stipulated penalties will accrue from the date of the missed milestone or the date the non-compliance occurs. In no event shall this Part give rise to a stipulated penalty for each missed regulatory milestone in excess of the statutory limits set forth in § 109 of CERCLA.

225. DOE's liability for stipulated penalties for missed regulatory milestones will accrue at the following rates:

a. $20,000 per week for each regulatory milestone designated as "first tier." First tier regulatory milestones shall be limited to no more than six per fiscal year, and shall reflect end-points for major projects.

b. $5,000 per week for each regulatory milestone designated as "second tier." Second tier regulatory milestones may reflect beginning points for multi-year projects or end-points in addition to those designated as "first tier" regulatory milestones.

226. Violations of regulatory milestones that run for part of a week shall be subject to the stipulated penalties set forth in the preceding paragraph, prorated for the number of days of violations. Accordingly, violations of "first tier" regulatory milestones shall be subject to stipulated penalties of $2,857 per day; violations of "second tier" regulatory milestones shall be subject to stipulated penalties of $714 per day.

227. Before final settlement of any assessment of stipulated penalties, the Parties will strive to reach agreement for preserving the use of penalty funds at the Site. Nevertheless, the regulators shall retain the ultimate authority for directing the disposition of the penalty funds.

228. Upon determining that DOE has failed to meet a regulatory milestone, the agency assessing a stipulated penalty shall so notify DOE in writing of the failure within 4 weeks of the first date of non-compliance. If the failure in question is not already subject to dispute resolution at the time such notice is received, DOE shall have 15 days after receipt of the notice to invoke the dispute resolution provisions of Subpart 15B on the questions of whether the failure did in fact occur, the number of days of violation, or, provided the conditions of Part 13, paragraph 174 are met, should be excused, in whole or in part, on the basis of force majeure. Within this same time frame, DOE may also submit any information for the regulators' consideration in assessing a penalty under this Part. Upon DOE's request, this information will be discussed at an informal conference prior to any assessment of the penalty. DOE shall not dispute the accrual rate for stipulated penalties assessed under this Part. EPA or CDPHE may exercise discretion regarding the amount of accrued stipulated penalties to be assessed within a specific period of violation. DOE shall not dispute EPA's or CDPHE's decision regarding the amount of the accrued penalty to be assessed. No assessment of a stipulated penalty shall be final until the conclusion of any dispute resolution procedures related to the assessment of the stipulated penalty. Stipulated penalties shall continue to accrue during any dispute resolution process, but DOE will not be obligated to pay until the dispute is resolved. DOE shall not be liable for the stipulated penalty assessed if the failure is determined, through the dispute resolution process, not to have occurred, or to be excused due to the occurrence of a force majeure.

229. Any stipulated penalty assessed by the EPA shall be payable to the Hazardous Substances Response Trust Fund from funds authorized and appropriated for that purpose. Any stipulated penalty assessed by CDPHE shall be payable to the General Fund of the State of Colorado. The Parties recognize that stipulated penalties assessed by CDPHE are done so pursuant to the State's CHWA authority and RCRA section 6001, 42 U.S.C. § 6961, and not pursuant to CERCLA.

230. DOE shall pay stipulated penalties assessed by CDPHE under this Part within 120 days, unless CDPHE agrees to a longer schedule. DOE shall request, for stipulated penalties assessed by the EPA, specific authorization and appropriation to pay such penalty in its budget submittal for FY+1, unless DOE has already submitted its final budget for that budget year to OMB, in which case DOE shall request such specific authorization and appropriation in its FY+2 budget submittal.

231. Nothing in this Part shall preclude the EPA or CDPHE from pursuing any other sanction that may be available to them for DOE's failure to meet any regulatory milestone in accordance with the requirements of this Agreement in lieu of assessing stipulated penalties. Nor shall anything in this Part preclude EPA or CDPHE from seeking or imposing any injunctive relief that may be available to them to compel DOE to remedy any failure to meet any regulatory milestone in accordance with the requirements of this Agreement. Assessment of a stipulated penalty by EPA and CDPHE shall preclude EPA and CDPHE from seeking to also impose a statutory penalty for failure to meet the same regulatory milestone. The EPA and CDPHE agree to not seek sanctions against DOE outside of this Agreement for those matters which are subject to a dispute under this Agreement, during the pendency of the dispute resolution process. Assessment of a stipulated penalty by CDPHE under this Part shall preclude CDPHE from seeking to impose additional penalties against DOE for failure to meet the same regulatory milestone under both this Agreement and a CHWA permit. Assessment of a stipulated penalty by CDPHE under this Part shall not preclude CDPHE from seeking to impose penalties against DOE's contractors for failure to meet the same regulatory

milestone under the CHWA permit; provided, however, that in such a case, if the contractor seeks reimbursement of the penalty assessed against it as an allowable cost and the DOE contracting officer allows the request, the penalty assessment against the contractor shall be vacated.

232. Nothing in this Part shall preclude EPA or the State from taking any enforcement action available to either of them for any violation of a requirement of this Agreement other than a regulatory milestone.

233. DOE-RFFO shall provide a copy of the annual reports required by § 120(e)(5) of CERCLA to EPA and CDPHE.

234. Nothing in this Agreement shall be construed to render any officer or employee of DOE personally liable for the payment of any stipulated penalty assessed pursuant to this Part.

PART 18 RESERVATION OF RIGHTS

235. If CDPHE and EPA are unable to resolve any dispute arising under this Agreement after utilizing the appropriate dispute resolution procedures, then each agency reserves its rights to impose its requirements directly on DOE, to defend the basis for those requirements, and to challenge any conflicting requirements imposed by the other regulatory agency.

236. The Parties each reserve any rights they may have to seek judicial review of a proposed decision or action taken with respect to any response actions at any given unit on the grounds that such proposed decision or action conflicts with its respective laws governing protection of human health and/or the environment. EPA and CDPHE agree to utilize the dispute resolution procedures contained in Subpart 15E prior to seeking such judicial review. It is the understanding of the Parties that this reservation is intended to provide for challenges where the adequacy of protection of human health and the environment or the means of achieving such protection is at issue. Notwithstanding the foregoing, the SRA may not challenge a decision by the LRA (except for Site-Wide issues).

237. Nothing in this Agreement shall be interpreted to affect EPA's authority under CERCLA to impose requirements necessary to protect public health and the environment. Where CDPHE is the LRA, the EPA DRC member shall consult with the CDPHE DRC member prior to EPA's exercise of this authority.

238. The Parties have determined that the activities to be performed under this Agreement are in the public interest. Except as provided in paragraph 242, EPA and CDPHE agree that compliance with this Agreement shall stand in lieu of any administrative and judicial remedies against DOE or its present or future contractors that are available to EPA and CDPHE regarding the currently known releases or threatened releases of hazardous substances, hazardous wastes, pollutants, hazardous constituents, or contaminants at the Site that are the subject of the activities being performed by DOE under this Agreement. However, nothing in this Agreement shall preclude EPA or the State from exercising any administrative or judicial remedies available to them under the following circumstances:

a. in the event or upon the discovery of a violation of, or noncompliance with, any provision of RCRA or CHWA, including any discharge or release of hazardous waste or hazardous constituents that is not addressed in the baseline or subsequent Work Description Documents;

b. upon discovery of new information regarding hazardous substances or hazardous waste management including, but not limited to, information regarding releases of hazardous waste, hazardous constituents, or hazardous substances that are not addressed in the baseline or subsequent Work Description Documents; or

c. upon CDPHE's or EPA's determination that such action is necessary to abate an imminent and substantial endangerment to the public health, welfare, or the environment.

239. For matters within the scope of this Agreement, CDPHE and EPA reserve the right to bring any enforcement action against other potentially responsible Parties, including contractors, subcontractors and/or operators, if DOE fails to comply with this Agreement. For matters outside this Agreement, and any actions related to response costs, EPA and the State reserve the right to bring any enforcement action against other potentially responsible Parties, including DOE's contractors, subcontractors and/or operators, regardless of DOE's compliance with this Agreement.

240. This Agreement shall not be construed to limit in any way any rights that may be available by law to any citizen to obtain information about the work under this Agreement or to sue or intervene in any action to enforce State or federal law.

241. Except as provided in paragraph 238, DOE is not released from any liability or obligation which it may have pursuant to any provisions of State and federal law, nor does DOE waive any rights it may have under such law to defend any enforcement actions against it.

242. DOE is not released from any claim for damages for injury to, destruction of, or loss of natural resources pursuant to section 107 of CERCLA.

243. EPA and the State reserve all rights to take any legal or response action for any matter not specifically part of the activities regulated under this Agreement.

244. Nothing in this Agreement shall be interpreted to affect EPA's responsibility for oversight of CDPHE's exercise of its authorized RCRA authorities. In carrying out any such oversight, EPA shall follow the statutory and regulatory procedures, EPA policies, any State-EPA MOU describing how EPA shall exercise its RCRA oversight responsibilities, and the provisions of this Agreement.

245. Nothing in this Agreement shall be construed to affect any criminal investigations or criminal liability of any person(s) for activities at RFETS.

246. Notwithstanding this Part or any other part of this Agreement, the State reserves any rights it may have to seek judicial review of a Site-Wide or final remedial action in accordance with sections 113,

121 and 310 of CERCLA, 42 U.S.C. §§ 9613, 9621 and 9659, but agrees to exhaust the dispute resolution process in Part 15 prior to seeking judicial review.

247. The State also reserves any rights it may have to seek judicial review of any ARAR determination made at the time of final remedy selection for an OU in accordance with sections 121 and 310 of CERCLA.

248. The Parties each reserve their rights to challenge any decision regarding final remedy selection at any OU under all applicable laws.

249. The Parties agree that in any administrative or judicial proceeding seeking to enforce the requirements of this Agreement, the DOE may raise as a defense that any failure or delay was caused by the unavailability of appropriated funds. In particular, nothing herein shall be construed as precluding DOE from arguing either that the unavailability of appropriated funds constitutes a force majeure, or that no provisions of this Agreement or Order shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1301 or 1341, or the Atomic Energy Act, 42 U.S.C. § 2201. While the State disagrees that an Anti-Deficiency Act defense, or any other defense based on lack of funding exists, the Parties do agree and stipulate that it is premature at this time to raise and adjudicate the existence of such a defense.

250. Nothing in this Agreement shall constitute an admission by any Party regarding the existence of CERCLA jurisdiction arising from DOE's failure to accomplish a target activity identified in Appendix 6.

251. Consistent with paragraph 26, in the event of any administrative or judicial action by the State or EPA, all Parties reserve all rights, claims, and defenses available under the law.

PART 19 AMENDMENT OF AGREEMENT

252. Except as provided in paragraph 287 (termination by State), the body of this Agreement (i.e., pages 1-85) may only be amended by mutual agreement of the Parties. Such amendments shall be in writing and shall have as their effective date the date on which they are signed by all Parties, unless otherwise agreed, and shall be incorporated into this Agreement by reference. Any Party may request that a proposed amendment be submitted for public comment. Any dispute as to the need for the proposed amendment shall be resolved pursuant to Part 15B (Resolution of Disputes) of this Agreement. Should the Parties determine that an amendment to this Agreement is necessary, and the amendment would affect a State environmental permit for the Site, CDPHE shall initiate appropriate permit modification procedures for that permit in accordance with its regulations.

253. Notwithstanding paragraph 252, approval of, or changes to, any Attachment or any document required to be submitted and approved pursuant to Part 9 (Review and Approval of Documents and Work) do not constitute amendments to this Agreement under this Part.

PART 20 PERIODIC REVIEW

254. The EPA and CDPHE will, pursuant to CERCLA section 121(c), review any remedial action associated with any final ROD that results in any hazardous substances, pollutants, or contaminants remaining on-site, no less often than every five years after the initiation of such final remedial action to assure that human health and the environment are being protected by the remedial action being implemented. To the extent that remedies have incorporated institutional controls, EPA shall review the continuing effectiveness of such controls, and shall evaluate whether additional remedial action could be taken that would reduce the need to rely on institutional controls. In making such an evaluation, EPA shall consider all relevant factors, including advances in technology and the availability of funds. If upon such review EPA finds that further remedial action by DOE is warranted to assure the protection of human health and the environment, DOE shall, consistent with sections 104 and 106 of CERCLA, implement remedial actions necessary to abate any release or threat of a release of a hazardous substance. The Parties agree that Part 19, shall not be construed as a limitation on the requirement for further remedial actions which might be required as a result of the five-year review mandated by CERCLA section 121(c). Part 10 shall be used to incorporate any requirement for further remedial actions.

255. Any dispute by DOE or CDPHE of the determination under paragraph 254 shall be resolved under Subpart 15C.

256. The Parties recognize that, even with the efforts in this Agreement to streamline and coordinate regulatory processes, implementation of this Agreement still involves multiple regulators and the coordination of many environmental laws and regulations. The success of this Agreement will depend, in large measure, on the good faith implementation of the consultative approach described in Part 7. The Parties agree to abide by the "Principles for Effective Dialogue and Communication at Rocky Flats," Appendix 2 of this Agreement. Consistent with these Principles, the Parties will endeavor to be reasonable in interpreting and applying applicable State and Federal environmental requirements.

257. The Parties shall assess the implementation of this Agreement every two years with the first assessment being conducted no later than the second anniversary date of the execution of this Agreement. In this assessment, the Parties shall conduct a review of the substantive and procedural requirements of this Agreement, including but not limited to the regulatory approach set forth in Part 8, to determine what measures each Party will take to ensure effective implementation of this Agreement. Such measures may include reallocation of resources, internal reorganization, revised procedures for consultation or internal coordination, and additional training of appropriate staff.

258. Any Party may propose an amendment to this Agreement pursuant to Part 19 when that Party believes its concerns regarding the effective implementation of this Agreement have not been adequately addressed through measures of the sort described in the preceding paragraph. The Party proposing an amendment to this Agreement under this Part shall provide a written analysis setting forth the basis for the proposed amendment to the other Parties.

259. If any Party rejects a proposed amendment under this Part, such rejection shall be subject to Part 15, including paragraphs 190 and 196-197 for any disputes that are nationally significant.

260. Amendments negotiated and approved by the Parties under this Part shall follow Part 19 for subsequent incorporation into the Agreement and, if necessary, applicable permits required by State environmental laws.

261. Pending the outcome of such negotiations and any dispute associated with negotiations under this Part, all portions of the Agreement shall remain effective, including Part 8, all regulatory milestones and all other requirements of this Agreement.

PART 21 REPORTING

262. The Parties' Project Coordinators will meet at least monthly to discuss the implementation of this Agreement. The purpose of these meetings will be to identify accomplishments, work in progress and anticipated work, potential changes to the baseline, implementation difficulties, compliance issues, opportunities for streamlining, and other matters of importance to the successful implementation of this Agreement. Each Party will provide the others with agenda issues at least two business days in advance of the meeting.

263. Quarterly, DOE will provide EPA and CDPHE with a Progress Report that describes the progress toward implementation of the activities covered by this Agreement. It is the Parties' intention, insofar as possible, to use existing reports and databases to fulfill this reporting requirement. Upon request, DOE will provide EPA and/or CDPHE with copies (or portions thereof) of the EM Progress Tracking System or equivalent report on a monthly basis.

PART 22 NOTIFICATION

264. Any report, document, or submittal provided to EPA and CDPHE pursuant to a schedule identified in or developed under this Agreement shall be hand delivered, sent certified mail, return receipt requested, or delivered by any other method that verifies receipt by the intended recipient. Such reports, documents, or submittals shall be delivered to the addresses listed in Attachment 11. Documents sent to DOE shall be sent to the address listed in Attachment 11. Documents must be sent to the designated addresses in a manner designed to be received by the date due, unless otherwise specified by the Parties.

265. Unless otherwise requested, all routine correspondence may be sent via regular mail.

PART 23 SAMPLING AND DATA/DOCUMENT AVAILABILITY

266. It is the goal of the Parties to develop and maintain an effective and efficient monitoring system for RFETS. This system includes both the monitoring programs conducted by DOE, CDPHE and the cities of Broomfield and Westminster, and data management systems. The monitoring system shall provide information for operating and remediating the Site, assuring public safety, and informing the public about discharges and emissions from RFETS. The system will minimize duplicative efforts. The long range goal is to integrate all environmental and natural resource monitoring.

267. In consultation with CDPHE and EPA, DOE shall establish an Integrated Monitoring Plan (IMP) that effectively collects and reports the data required to ensure the protection of human health and the environment consistent with the Preamble, compliance with this Agreement, laws and regulation, and the effective management of RFETS's resources. The IMP will be jointly evaluated for adequacy on an annual basis, based on previous monitoring results, changed conditions, planned activities and public input. Changes to the IMP will be made with the approval of EPA and CDPHE. Disagreements regarding any modifications to the IMP will be subject to the dispute resolution process described in Subpart 15B or E, as appropriate.

268. All Parties shall make available to each other and the public results of sampling, tests, or other data with respect to the implementation of this Agreement as specified in the IMP or appropriate sampling and analysis plan. If quality assurance is not completed within the time frames specified in the IMP or appropriate sampling and analysis plan, raw data or results shall be submitted upon the request of EPA or CDPHE. In addition, quality assured data or results shall be submitted as soon as they become available.

269. Consistent with Part 30 (Classified and Confidential Information), DOE shall permit EPA, CDPHE, or their authorized representatives to inspect and copy, at reasonable times, all records, files, photographs, documents, and other writing, including sampling and monitoring data, pertaining to work undertaken pursuant to this Agreement.

270. By the end of FY 1996, the Parties will establish a mutually agreed-upon mechanism to exchange verified and validated monitoring data between the Parties and the cities of Westminster and Broomfield in a timely and efficient manner.

PART 24 RETENTION OF RECORDS

271. DOE shall preserve all agency records and documents in its possession or in the possession of its employees, agents, contractors or subcontractors which relate in any way to the presence of hazardous substances, pollutants, and contaminants at the Site for the duration of this Agreement or for a term consistent with the longest duration required by the NCP, RCRA, CHWA, or the DOE records retention schedules then in effect at the termination of this Agreement. DOE retention schedules are developed in accordance with the National Archives and Records Administration records management handbook, Disposition of Federal Records (NSN 7610-01-055-8704). All such records and documents so retained shall be proposed for permanent retention in accordance with 36 CFR 1228.28(b). DOE shall make all such records or documents available to CDPHE and the EPA upon request.

PART 25 ACCESS

272. Without limitation on any authority conferred on EPA or CDPHE by statute, regulation, court order, or agreement, EPA, CDPHE, and/or their authorized representatives, with proper safety and security clearances, shall have authority to enter RFETS at all reasonable times, with or without advance notification for the purposes of, among other things:

a. inspecting records, operating logs, contracts, and other documents directly related to implementation of this Agreement;

b. reviewing the progress of DOE or its contractors in implementing this Agreement;

c. conducting such tests as the EPA or State Project Coordinator deems necessary; or

d. verifying the data submitted to EPA and/or CDPHE by DOE.

Nothing in this paragraph shall be construed as a waiver of the attorney-client privilege.

273. DOE shall honor all requests for such access by EPA or CDPHE, conditioned only upon presentation of proper credentials and conformance with RFETS security and safety requirements. The latter may include dosimetry devices, training on RFETS safety features (such as alarms, barriers, and postings), and advance fittings for clothing and respiratory equipment as ordinarily required. Escorts to restricted areas shall be assigned expeditiously by the appropriate Assistant Manager, RFFO.

274. To the extent that this Agreement compels access to property not owned by DOE (Third Party Property), DOE shall, to the extent of its authority including CERCLA § 104, and taking all appropriate administrative and judicial actions, obtain access to Third Party Property for the Parties, their agents and their contractors. DOE shall use its best efforts with the Third Party Property owner to enter into a limited non-exclusive agreement (e.g., license or easement) to allow the Parties, their agents and their contractors to enter upon the Third Party Property to perform work required under this Agreement. DOE shall also use its best efforts to ensure that the non-exclusive agreement runs with the land, and binds and inures to the benefit of the Parties, their successors and their assigns.

275. If DOE is unable to obtain a non-exclusive agreement that runs with the land, DOE may enter into any other type of agreement that grants access to the Third Party Property for the Parties, their agents and their contractors. Any access agreement that does not run with the land must provide for (1) the continuation of any work required under this Agreement in the event the Third Party Property owner transfers an interest in or otherwise encumbers the Third Party Property; and (2) a thirty day written notice, sent by certified mail, to the EPA, CDPHE and DOE prior to the Third Party Property owner's transferring an interest in or otherwise encumbering the Third Party Property. DOE shall not enter into any access agreement that provides conditional access to the EPA or CDPHE without EPA's and CDPHE's prior consent. The EPA's or CDPHE's refusal to approve a conditional access agreement shall constitute a denial of access to the Third Party Property.

276. If, after having taken reasonable steps to do so, DOE is unable to obtain a non-exclusive access agreement from a Third Party Property owner, the EPA shall assist DOE in obtaining access to the Third Party Property. If necessary, DOE shall also request that the Department of Justice (DOJ) seek a court order to obtain access to the Third Party Property for the Parties, their agents and their contractors. EPA's assistance shall include the EPA's support in requesting that DOJ seek a court order to gain access to the Third Party Property.

277. In the event that the Parties agree that they have failed to obtain access to Third Party Property, notwithstanding their pursuit of all reasonable means as described in the preceding paragraphs of this Part, DOE shall submit appropriate changes to approved work under this Agreement within 15 days of such agreement.

PART 26 TRANSFER OF REAL PROPERTY

278. No lease or conveyance of title, easement, or other interest in the real property at RFETS on which any containment system, treatment system, monitoring system, or other response action(s) is installed or implemented pursuant to this Agreement shall be consummated by DOE without provision for continued maintenance of any such system or other response action(s). At least 30 days prior to any conveyance, DOE shall notify EPA and CDPHE of the provisions made for the continued operation and maintenance of any response action(s) or system installed or implemented pursuant to this Agreement. DOE shall also comply with the provisions of section 120(h) of CERCLA regarding any conveyance of title at RFETS and any applicable law or regulation governing the disposal of real property owned by the United States.

279. DOE's current mission for RFETS presents the possibility that title to portions or all of RFETS may be conveyed to other parties. DOE shall comply with the provisions of the Community Environmental Response Facilitation Act (CERFA), 42 U.S.C § 9620(h)(4) and applicable law regarding any lease. DOE shall perform the required assessments in order to identify all uncontaminated real property at RFETS. The results of these assessments shall be provided to the Regional Administrator of EPA Region VIII by DOE for the Regional Administrator's review and concurrence, and to the public. Upon the sale or other transfer of property identified as uncontaminated, DOE shall record in any related documents any covenants required by CERFA.

280. Decision documents shall require institutional controls as necessary to protect human health and the environment. Any transfer of real property shall be subject to any such institutional controls.

PART 27 PARTICIPATION BY LOCAL ELECTED OFFICIALS AND THE PUBLIC/ADMINISTRATIVE RECORD

281. As required by the IAG, DOE developed and implemented a Community Relations Plan (CRP) which responded to the need for an interactive relationship with all interested community elements in the Rocky Flats area. The plan was based on community meetings and other relevant information including public comments received on the IAG. The CRP addressed activities and elements of work being undertaken by DOE. DOE agreed to develop and implement the CRP in a manner consistent with sections 113(k) and 117 of CERCLA, 42 U.S.C. §§ 9313(k) and 9617, relevant community relations provisions of the NCP, EPA policy and guidance (including but not limited to EPA OSWER Directive 2903.03C, Community Relations in Superfund: A Handbook, January, 1992, and any modifications thereto), DOE policy and guidance, State statutes, regulations, and guidance identified in the CRP. All Parties recognize the need to review and revise the CRP in light of DOE's new mission and the finalization of this Agreement. Therefore, DOE shall develop, in consultation with CDPHE and EPA, a revised CRP, to be titled the "Rocky Flats Site-Wide Integrated Public Involvement Plan." This plan will adhere to the following principles and guidelines:

a. ongoing consultation with local elected officials;
b. public involvement will be integrated to assure consistency with RFETS' long-term vision, mission and budget;
c. public involvement at RFETS will be tied clearly to the decision-making process;
d. public involvement at RFETS will meet state and federal legal requirements;
e. public involvement will be pursued for input to significant public policy issues, even if there is no legal requirement for involvement;
f. the public involvement approach will recognize the needs for participation by various and diverse community groups and people with varying levels of knowledge and understanding of RFETS issues;
g public involvement achievements, and the Integrated Public Involvement Plan, will be reviewed at least annually by DOE in consultation with the relevant agencies and by stakeholder groups for applicability to and viability under current circumstances at RFETS; and
h. public involvement will include activities which are informational and/or educational in nature in accordance with the needs of the decision-makers and the stakeholders.

282. Except in case of an emergency or the need for the public to receive information immediately, any Party issuing a press release to the media regarding any of the work required by this Agreement shall advise the other Parties of the nature of the press release at least two business days before the issuance of such press release and of any subsequent changes prior to release. In the case of an emergency or the need for the public to obtain the information immediately, the Parties shall provide such notice as soon a practicable.

283. DOE established and is maintaining Administrative Record files for CERCLA response actions at or near the Site in accordance with section 113(k) of CERCLA. The Administrative Record file and resultant Administrative Record shall be established and maintained in accordance with EPA policy and guidelines. Any future changes to these policies and guidelines affecting DOE's maintenance of the Administrative Record file shall be discussed by the Parties and an agreement will be reached on how best to accommodate those changes. DOE shall maintain the master copy of the Administrative Record file at or near RFETS. The Administrative Record file and final Administrative Records shall be established and maintained by DOE after EPA and State approval. There are four Information Repository locations for the public to view information copies of the Administrative Record files. The repository copies of the Administrative Record files may be supplied in microfilm, electronic format, optical format, or any other format or media which will allow access to a reasonable facsimile of the original documents. Each repository will also house equipment to facilitate the viewing and reproducing documents contained in the Administrative Record files. These repositories are listed in Attachment 7. At least one copy of the Administrative Record shall be accessible to the public at times other than normal business hours.

284. The Administrative Record files shall be established and maintained for each OU and for sitewide activities. The Administrative Record shall be updated by DOE at least annually. An index of documents in the complete Administrative Record files will accompany each update to the Administrative Record files. Documentation on issues giving rise to decisions from dispute

resolution procedures of Part 15, and decisions themselves, shall be included in the Administrative Record files.

285. EPA, after consultation with CDPHE when necessary, shall make the final determination of whether a document is appropriate for inclusion in an Administrative Record. EPA and CDPHE shall participate in compiling the Administrative Records by submitting documents to DOE as EPA and CDPHE deem appropriate. DOE shall include these documents in the Administrative Record files. Every Administrative Record file will be reviewed by DOE, EPA, and CDPHE before the file is closed at the signing of the appropriate decision document.

PART 28 DURATION/TERMINATION

286. Within 60 days after the Federal Register notice that removes the Site from the NPL, all Parties shall commence negotiations for appropriate modification of this Agreement which considers among other things the continuing requirements of any CAD/RODs being implemented at the site at that time.

287. CDPHE may, in its sole discretion, terminate this Agreement upon 60 days' written notice to the other Parties. Termination of the Agreement by CDPHE shall be effective on the 60th day after such notice, unless CDPHE agrees otherwise in writing before such date. Once termination is effective pursuant to this paragraph, this Agreement shall have no further force or effect, except that the regulatory milestones and any decisions made by EPA that have become requirements of this Agreement shall remain enforceable as requirements of a CERCLA § 120 Interagency Agreement between EPA and DOE.

PART 29 SEVERABILITY

288. If any provision of this Agreement is ruled invalid, illegal, unconstitutional, or unenforceable, the remainder of the Agreement shall not be affected by such ruling.

PART 30 CLASSIFIED AND CONFIDENTIAL INFORMATION

289. Notwithstanding any provision of this Agreement, all requirements of the AEA of 1954, as amended, and all Executive Orders concerning the handling of unclassified controlled nuclear information, restricted data, and national security information, including "need to know" requirements, shall be applicable to any access to information or facilities covered under the provisions of this Agreement. EPA and CDPHE reserve their right to seek to otherwise obtain access to such information or facilities if it is denied, in accordance with applicable law.

290. Any Party may assert on its own behalf, or on behalf of a contractor, subcontractor, or consultant, a claim of confidentiality or privilege covering all or any part of the information requested by this Agreement, pursuant to CERCLA section 104, 42 U.S.C. § 9604 and State law. Except as provided in the preceding paragraph, analytical data shall not be claimed as confidential. Parties are not required to provide legally privileged information. At the time any information is furnished which is claimed to be confidential, all Parties shall afford it the maximum protection allowed by law. If no claim of confidentiality accompanies the information, it may be made available to the public without further notice.

PART 31 RECOVERY OF STATE COSTS

291. DOE agrees to reimburse CDPHE for:

a. all non-discriminatory state environmental fees or assessments; and
b. CERCLA administrative or oversight activities incurred which specifically relate to the implementation of this Agreement at the Site, to the extent such costs are reasonable, not inconsistent with the NCP, and are not covered by permit fees and other assessments, or by any other agreement between the Parties.

292. The amount and schedule of payment of these costs will be negotiated based on anticipated needs and in consideration of DOE's multi-year funding cycles. CDPHE reserves all rights it has to recover any other past and future costs in connection with CERCLA activities conducted at the Site. CDPHE shall annually provide DOE a written estimate of projected costs to be incurred in implementing this Agreement for the upcoming two fiscal years, no later than the end of the first quarter of each fiscal year. DOE and CDPHE may choose to enter into a grant or other mechanism to provide for payment of CDPHE's costs relating to the implementation of this Agreement, including any fees or other assessments that would otherwise be imposed under 6 CCR 1007-3, Part 100.3, 5 CCR 1001 (air quality), or (after delegation of the federal program for Rocky Flats) 5 CCR 1002 (water quality).

293. Unless DOE and CDPHE have entered into a grant or other reimbursement mechanism as described in the preceding paragraph, and DOE provides funding as specified in such grant or mechanism, DOE agrees to pay CDPHE, in full, and no later than 30 days after receipt of invoice, all document review fees and annual waste fees as required by 6 CCR 1007-3, Part 100.3, consistent with section 6001 of RCRA; 5 CCR 1001 (air quality fees); and 5 CCR 1002 (water quality fees). DOE may contest charges in accordance with the dispute resolution procedures of Subpart 15B. DOE recognizes that if it does not reimburse CDPHE for all of its costs relating to the implementation of this Agreement as specified above, CDPHE will be unable to meet the time frames specified for its activities in this Agreement, including the time specified to render a decision on a proposed PAM. In the event DOE does not reimburse CDPHE for all of its costs relating to the implementation of this Agreement as specified above, CDPHE is excused from the obligation to meet such time frames, and no proposed PAM shall be deemed approved by reason of CDPHE's failure to meet the time frame specified in this Agreement to render a decision on a proposed PAM.

PART 32 OTHER CLAIMS

294. Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action, or demand in law or equity by or against any person, firm, partnership, or corporation, including any DOE or predecessor agency contractor, subcontractor, and/or operator, either past or present, for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

295. This Agreement does not constitute any decision on pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

296. Neither EPA nor CDPHE shall be held as a party to any contract entered into by DOE to implement the requirements of this Agreement.

PART 33 EFFECTIVE DATE

297. The effective date of this Agreement shall be the date on which the last Party signs this Agreement.

PART 34 APPROVAL OF AGREEMENT

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into this Agreement and to legally bind such Party to this Agreement.

_____
Patti Shwayder, Executive Director
Colorado Department of Public Health and Environment

_____
Alvin L. Alm, Assistant Secretary
for Environmental Management
U.S. Department of Energy

_____
Jessie M. Roberson, Manager
Rocky Flats Field Office
U.S. Department of Energy

_____
Jack W. McGraw, Acting Regional Administrator
Region 8, Environmental Protection Agency